

Exhibit CCC

11/28/16 AM

REALTIME UNEDITED TRANSCRIPT ONLY

1

09:22:37 1 Judge Kennelly, November 28, 2016, Fields v. City of Chicago,
09:24:00 2 trial, day nine.

09:24:04 3 THE CLERK: 10 C 168, Fields v. City of Chicago.

09:31:28 4 MR. LOEVY: Good morning, your Honor. Jon Loevy,
09:31:32 5 Anand Swaminathan, Candace Gorman for the plaintiff.

09:31:34 6 MR. NOLAND: Dan Noland, Terry Burns and Paul
09:31:37 7 Michalik for the city and Murphy.

09:31:41 8 MR. KULWIN: Shelly Kulwin.

09:31:42 9 THE COURT: The marshals came in this morning and
09:31:44 10 advised me that Mr. Hawkins is here. I assume we are going to
09:31:47 11 start with him.

09:31:48 12 MR. LOEVY: No, your Honor. We have a short witness,
09:31:50 13 relatively short before him. We will.

09:31:52 14 THE COURT: What does relatively short mean?

09:31:54 15 MR. LOEVY: My exam is between a half an hour and 40
09:31:56 16 minutes.

09:31:57 17 THE COURT: Who is it?

09:31:58 18 MR. LOEVY: His name is Joe Bogdalek and it sets up
09:32:01 19 some of --

09:32:01 20 THE COURT: Remind me where he fits in.

09:32:03 21 MR. LOEVY: He is a detective who interviewed some of
09:32:06 22 the witnesses in the case. But it is important to our witness
09:32:09 23 order. We did talk about Hawkins going in the morning but not
09:32:12 24 necessarily first.

09:32:13 25 THE COURT: Okay. I am not seeing -- I don't think

REALTIME UNEDITED TRANSCRIPT ONLY

11/28/16 AM

REALTIME UNEDITED TRANSCRIPT ONLY

2

09:32:20 1 the marshals are here right now. Mr. Kuhn, do you know where
09:32:29 2 they are?

09:32:32 3 MR. KUHN: No.

09:32:32 4 THE COURT: If you are telling me an hour -- a half
09:32:36 5 an hour to 45 minutes, I multiply.

09:32:41 6 MR. LOEVY: I feel confident that my exam will be
09:32:46 7 done in approximately 45 minutes, confident. I am hoping for
09:32:53 8 less.

09:32:53 9 THE COURT: You are questioning Bogdalek about people
09:32:56 10 that he interviewed, basically?

09:32:57 11 MR. LOEVY: Yes.

09:32:58 12 THE COURT: Who is doing?

09:33:01 13 MR. MICHALIK: I am.

09:33:02 14 THE COURT: Are you going to be longer than his
09:33:05 15 examination?

09:33:05 16 MR. MICHALIK: It may be longer, but a half an hour
09:33:08 17 depending on what Mr. Loevy covers.

09:33:10 18 THE COURT: And why is it important? Basically,
09:33:11 19 what's happening is I've got three marshals hanging around out
09:33:15 20 here and a person who is being kept I'm assuming in somebody's
09:33:19 21 jury room right now in the back. Why is it important?

09:33:21 22 MR. LOEVY: Two reasons, your Honor. First of all,
09:33:24 23 we are presently printing and clipping pages of Mr. Hawkins'
09:33:27 24 outline. That was unanticipated, but I did not get ready in
09:33:27 25 time.

REALTIME UNEDITED TRANSCRIPT ONLY

11/28/16 AM

REALTIME UNEDITED TRANSCRIPT ONLY

3

09:33:27 1 THE COURT: Okay.

09:33:29 2 MR. LOEVY: But the anticipated reason we did discuss
09:33:31 3 it on Friday and I thought had an agreement that he would go
09:33:33 4 in the morning but not first.

09:33:36 5 THE COURT: Okay.

09:33:36 6 MR. LOEVY: And we are setting up some testimony.

09:33:38 7 THE COURT: Okay. So I guess this means I need to
09:33:42 8 rule on at least part of this issue about what's been briefed
09:33:47 9 that the defendants responded to on Saturday. I need to ask
09:33:51 10 this question. I looked -- this is a motion for curative
09:33:53 11 instruction to bar future testimony about witness intimidation
09:33:58 12 and the response to that. The response refers to anticipated
09:34:04 13 testimony by Mr. Hawkins on this topic and I am talking about
09:34:10 14 paragraph 6 on page 4.

09:34:13 15 Here is my question. It says defendants anticipate
09:34:18 16 that Earl Hawkins will testify that during plaintiff's 1986
09:34:23 17 criminal trial, El Rukns including General James Speights,
09:34:26 18 S-p-e-i-g-h-t-s, were trying to locate witnesses to threaten
09:34:30 19 them to change their testimony, and what's cited there is not
09:34:33 20 testimony from the previous trial in this case but rather
09:34:36 21 testimony from one of the state court proceedings before judge
09:34:40 22 /PWAOEBL I think it was.

09:34:42 23 Did Mr. Hawkins testify about this topic in the trial
09:34:46 24 here last time?

09:34:48 25 MR. LOEVY: I can say confidently no, your Honor.

REALTIME UNEDITED TRANSCRIPT ONLY

11/28/16 AM

REALTIME UNEDITED TRANSCRIPT ONLY

4

09:34:54 1 MR. KULWIN: I asked Mr. Burns. He has the lead.

09:34:56 2 THE COURT: He is shaking his head.

09:34:59 3 MR. KULWIN: He is shaking his head.

09:35:03 4 MR. BURNS: He did not.

09:35:04 5 THE COURT: Is it because I said he couldn't or

09:35:06 6 because it wasn't elicited from him? Does anybody know the

09:35:10 7 answer?

09:35:10 8 MR. NOLAND: It was elicited from him at the

09:35:12 9 proceeding you just described.

09:35:13 10 THE COURT: I understand. I am talking about my

09:35:14 11 trials. That's the only one I care about at this point.

09:35:17 12 MS. KATZ: No.

09:35:18 13 MR. KULWIN: I don't think it was elicited.

09:35:19 14 THE COURT: Was there discussion about it ahead of

09:35:22 15 time, was it covered by a ruling that I made? Everybody has

09:35:25 16 to be a hundred percent sure on this.

09:35:28 17 MS. KATZ: Yes. I read it, your Honor, and there was

09:35:30 18 no record to objections or any rulings before Mr. Hawkins got

09:35:33 19 on the stand regarding witness intimidation.

09:35:37 20 THE COURT: So is the Speights -- how is the guy's

09:35:40 21 name pronounced?

09:35:41 22 MR. KULWIN: Speights.

09:35:42 23 THE COURT: The following sentence in the defendants'

09:35:47 24 submission says that, The defendants anticipate that there

09:35:50 25 will be evidence introduced at trial through Robert Beseth,

REALTIME UNEDITED TRANSCRIPT ONLY

11/28/16 AM

REALTIME UNEDITED TRANSCRIPT ONLY

5

09:35:56 1 B-e-s-e-t-h, Joseph Murphy and Jackie Clay, that Bill Swanos
09:36:00 2 brought Jean Ball with him when he tried to interview Eric and
09:36:03 3 Randy Langston prior and Gerald Morris prior to plaintiff's
09:36:04 4 1986 trial and that the Jean Ball was the common law wife of
09:36:09 5 James Speights, the El Rukn general who was attempting to
09:36:10 6 locate witnesses and threaten them to change their testimony,
09:36:12 7 and for that it cites testimony from the previous trial. So I
09:36:17 8 take it that the defendants are anticipating introducing that
09:36:23 9 again in this case.

09:36:24 10 MR. KULWIN: Yes.

09:36:24 11 THE COURT: Okay. So what do you expect Mr. Hawkins'
09:36:28 12 testimony to be about this? I need to be you as specific as
09:36:32 13 you humanly possibly can.

09:36:34 14 MS. KATZ: He is not going to be.

09:36:35 15 MR. BURNS: We don't anticipate that, your Honor.

09:36:40 16 THE COURT: Defendants anticipate that Earl Hawkins
09:36:43 17 will testify that during --

09:36:43 18 MR. KULWIN: Judge, we wrote that extra sentence, I
09:36:50 19 haven't talked to Mr. Hawkins, I haven't prepped him, I don't
09:36:55 20 know, I read that, I anticipated that Mr. Burns was going to
09:36:58 21 elicit that, but he is not.

09:36:59 22 THE COURT: You're not. Fine. Then I don't have to
09:37:00 23 worry about that.

09:37:01 24 MR. LOEVY: That's one. Easy ones.

09:37:03 25 THE COURT: Good.

REALTIME UNEDITED TRANSCRIPT ONLY

09:37:03 1 MR. LOEVY: We still have some other issues, your
09:37:05 2 Honor, regarding the intimidation that we'd like to discuss.

09:37:10 3 THE COURT: Does it concern Hawkins?

09:37:11 4 MR. LOEVY: No.

09:37:12 5 THE COURT: I need to talk to these marshals for a
09:37:14 6 second. I am just going to tell you if there is a problem
09:37:18 7 logistically, then I am going to make you change the order.
09:37:22 8 Just sit tight for a couple minutes, I'll be right back.

09:40:08 9 (The jury enters the courtroom.)

09:40:10 10 THE COURT: Okay. Everybody can have a seat. Good
09:40:17 11 morning. I hope everybody had a wonderful holiday and a nice
09:40:21 12 weekend. We are ready with the next witness. I want to give
09:40:24 13 you a head's up. We are going to stop a little early today.
09:40:28 14 We are going to stop at 4:10.

09:40:30 15 We will break -- we will break for lunch around the
09:40:33 16 normal time.

09:40:36 17 (Witness sworn.)

09:40:52 18 MR. LOEVY: May I proceed, your Honor?

09:40:53 19 THE COURT: Yes.

09:40:53 20 - - -

09:40:53 21 JOSEPH J. BOGDALEK, DIRECT EXAMINATION

09:40:53 22 BY MR. LOEVY:

09:40:54 23 Q. Could you state your name for the record, please.

09:40:56 24 A. Joseph J. Bogdalek, B-o-g-d-a-l-e-k.

09:41:01 25 Q. What do you do for a living, sir?

11/28/16 AM

REALTIME UNEDITED TRANSCRIPT ONLY

7

09:41:03 1 A. I am a retired police officer.

09:41:04 2 Q. How long did you work for the Chicago Police Department?

09:41:06 3 A. 34 years.

09:41:07 4 Q. In that time, did you develop familiarity with the

09:41:11 5 policies and practices of the approximated?

09:41:13 6 A. Yes.

09:41:13 7 Q. Let's turn your attention back to April of '84. You were

09:41:17 8 one detectives that responded to the scene of the

09:41:17 9 Smith/Hickman, correct?

09:41:23 10 A. Yes.

09:41:23 11 Q. And quite a few detectives back in April 1984, tried to

09:41:27 12 solve that crime, correct?

09:41:28 13 A. Yes.

09:41:28 14 Q. Tell the jury approximately how many detectives worked on

09:41:30 15 it in the aftermath of that crime, maybe about a dozen?

09:41:38 16 A. I was just thinking back. I would think maybe 8, 9.

09:41:47 17 Q. All right. How long did everybody work on the case after

09:41:49 18 it occurred?

09:41:50 19 A. Myself and my partner worked on it for four days. I don't

09:41:56 20 know how long the investigation went after that.

09:41:57 21 Q. But eventually it went dormant and cold, correct?

09:42:01 22 A. Yes, it did.

09:42:02 23 Q. All right. Your role was interviews, you conducted some

09:42:05 24 of the interviews, correct?

09:42:06 25 A. Yes.

REALTIME UNEDITED TRANSCRIPT ONLY

11/28/16 AM

REALTIME UNEDITED TRANSCRIPT ONLY

8

09:42:06 1 Q. How many similar such interviews had you conducted over
09:42:09 2 the course of your career?
09:42:10 3 A. Numerous. I don't recall.
09:42:13 4 Q. Hundreds?
09:42:14 5 A. A number.
09:42:14 6 Q. If not thousands?
09:42:15 7 A. Not thousands. Hundreds.
09:42:17 8 Q. Fairly common part of your job, correct?
09:42:19 9 A. Yes.
09:42:19 10 Q. How, to prepare for your testimony, you reviewed reports,
09:42:24 11 correct?
09:42:24 12 A. Yes.
09:42:24 13 Q. Do you have any independent recollection of these
09:42:29 14 interviews, sir?
09:42:31 15 A. Independent recollection?
09:42:32 16 Q. In other words, you read the reports, you can read what
09:42:35 17 happened, right?
09:42:35 18 A. Yes.
09:42:36 19 Q. That's not the same thing as you sit here today you can
09:42:39 20 pull up in your memory bank these actual interviews, right?
09:42:42 21 A. I reviewed my reports, yes, those are actual interviews.
09:42:44 22 Q. Right. But you are not claiming to independently recall
09:42:47 23 more than what's written on the page, are you?
09:42:49 24 A. I can testify to what's on the page.
09:42:54 25 Q. Yeah. It's been 30 years, right?

REALTIME UNEDITED TRANSCRIPT ONLY

09:42:57 1 A. 30, 32 years, 34.

09:42:59 2 Q. You know what happened because you can read the report but
09:43:01 3 you?

09:43:02 4 A. Yes.

09:43:02 5 Q. You don't independently remember the events, right?

09:43:05 6 A. I'd have to refer to my report to recall.

09:43:09 7 THE COURT: I think you've gotten an answer,
09:43:11 8 Mr. Loevy.

09:43:11 9 BY MR. LOEVY:

09:43:12 10 Q. You know from reviewing your reports that you were working
09:43:14 11 that day with a partner, right?

09:43:16 12 Q. And what was that partner?

09:43:18 13 A. Detective James Minogue.

09:43:20 14 THE COURT: M-i-n-o-g-u-e?

09:43:22 15 THE WITNESS: G-u-e.

09:43:27 16 BY MR. LOEVY:

09:43:27 17 Q. And you spoke to people in a couple of apartments,
09:43:30 18 correct?

09:43:30 19 A. Yes.

09:43:30 20 Q. Do you remember from reading the reports what apartments
09:43:33 21 they were?

09:43:33 22 A. Apartment 105 and apartment 106.

09:43:37 23 Q. One of the people you spoke to, and this is plaintiff's
09:43:41 24 8614, if we could have the ELM0, your Honor?

09:43:44 25 THE COURT: Yep.

09:43:44 1 BY MR. LOEVY:

09:43:51 2 Q. One of these people you spoke to was a person named Minnie
09:43:55 3 White, right?

09:43:56 4 A. Yes.

09:43:57 5 Q. And she basically told you she heard a couple of shots
09:44:00 6 that she thought were fire crackers and she saw the victims on
09:44:06 7 the ground and called the police?

09:44:07 8 A. Yes.

09:44:08 9 Q. Her daughter-in-law walked in the apartment and she could
09:44:11 10 add nothing further?

09:44:11 11 A. Right.

09:44:12 12 Q. Why did you write down those seemingly benign and mundane
09:44:19 13 details. It was all part of the investigation referring to
09:44:21 14 her daughter-in-law walking into the apartment, she was
09:44:25 15 interviewed later?

09:44:25 16 Q. That's your job, is it not, to talk to people, write down
09:44:28 17 what they say and worry about later what becomes relevant and
09:44:31 18 what's not relevant?

09:44:33 19 A. Repeat that again, please.

09:44:34 20 Q. Your job as a detective is to write down everything that
09:44:36 21 people tell you, right?

09:44:38 22 A. Yes.

09:44:39 23 Q. You didn't know on this day if laugh he will right was
09:44:41 24 going to turn out to be important or not important, right?

09:44:44 25 A. She was to be interviewed, yes.

09:44:46 1 Q. All right. So you wrote it all down.

09:44:48 2 Now, you also knocked -- by the way, she -- Minnie
09:44:55 3 White gave you her phone number, right, it looks like or
09:44:58 4 somebody did, laugh he will Wright?

09:45:01 5 THE COURT: I think that's Lavette, L-a-v-e-t-t-e.

09:45:06 6 MR. LOEVY:

09:45:07 7 Q. Now, you also knocked on the Langston's door, right?

09:45:10 8 A. Yes.

09:45:10 9 Q. You know from your report you spoke to Sandra Langston?

09:45:13 10 A. Yes.

09:45:13 11 Q. Let's take a look at what your interview shows regarding
09:45:18 12 Sandra Langston. And if you could read it, I'd appreciate it.

09:45:24 13 A. Langston, Sandra, was interviewed and related the
09:45:30 14 following in essence but not verbatim. Just prior to the
09:45:36 15 victims being shot, she was talking to the victim Jerome,
09:45:39 16 Fuddy, Jerome Smith, I'm sorry, Fuddy from her second floor
09:45:43 17 bedroom about Paul Haily getting out of jail.

09:45:46 18 After the conversation ended, the victim Smith said
09:45:48 19 he was going to the front of the building at 706 East 39th
09:45:52 20 Street and walked away.

09:45:54 21 Q. Let me stop you for a second.

09:45:56 22 Did she in fact tell you that immediately or shortly
09:45:58 23 before the shooting, she out of her second floor bedroom
09:46:01 24 window was talking to the victim Fuddy?

09:46:03 25 A. Yes.

09:46:03 1 Q. All right. And then after that conversation ended, he did
09:46:07 2 talk walk away to the front, he walked away to the front of
09:46:10 3 706 East 39th, right?
09:46:11 4 A. Yes.
09:46:12 5 Q. And that's -- there is a breezeway that goes through the
09:46:14 6 building, right?
09:46:15 7 A. Yes.
09:46:15 8 Q. And then she also told you a short time later she heard
09:46:18 9 three shots coming from the front of the building, right?
09:46:20 10 A. Yes.
09:46:20 11 Q. And then her mother came running up to her bedroom and
09:46:23 12 told her the victims had been shot?
09:46:25 13 A. Yes.
09:46:25 14 Q. So she first added that she observed two male blacks
09:46:29 15 following the victim Smith when he walked away from her
09:46:34 16 bedroom window?
09:46:35 17 A. Yes.
09:46:35 18 Q. How did she describe the two mail blacks that were behind
09:46:39 19 Fuddy?
09:46:39 20 A. She described -- oh, she described one, number one, mail
09:46:43 21 black early 20s, light complexion and wearing a red ski mask
09:46:50 22 hat and jacket, and a second one, light complexion and wearing
09:46:54 23 a blue jacket.
09:46:55 24 Q. All right. That did not mean that these two men that were
09:46:59 25 -- that she saw behind Fuddy were the murderers, right?

09:47:01 1 A. Right.

09:47:02 2 Q. But if they were, they were in their early 20s and light

09:47:06 3 reflected. That did not watch someone like Mr. Fields,

09:47:11 4 correct, for the record? He is dark complected?

09:47:14 5 A. That's the information she provided.

09:47:17 6 Q. Whoever was following behind Fuddy that she remembered did

09:47:21 7 not have the complexion that Mr. Fields did, correct?

09:47:23 8 A. Correct.

09:47:23 9 Q. You would describe him as dark complected for the record?

09:47:26 10 A. Yes.

09:47:26 11 Q. And if he was in his 30s then he also was not in his early

09:47:30 12 20s, obviously?

09:47:31 13 A. I don't recall his age.

09:47:34 14 Q. Now, it's not uncommon that people would volunteer

09:47:37 15 information like, hey, I think I saw some people, here's my

09:47:42 16 description, right?

09:47:42 17 A. It's not uncommon?

09:47:44 18 Q. Right. People would try and be helpful sometimes, right?

09:47:49 19 A. Yes.

09:47:49 20 Q. And if this in fact is what she saw, this would have been

09:47:54 21 before any shooting happened, she saw guys walking, right?

09:47:57 22 A. Yes.

09:47:57 23 Q. So if the shooting hadn't happened yet, that would have

09:48:01 24 been a benign event to have no reason to stick in her mind,

09:48:05 25 right?

09:48:05 1 MR. KULWIN: Objection, Judge.

09:48:06 2 THE COURT: Objection sustained.

09:48:06 3 BY MR. LOEVY:

09:48:07 4 Q. All right. Here's some important questions.

09:48:09 5 Did you ever at any point learn from Sandra that she
09:48:13 6 was married to Gerald Morris?

09:48:15 7 A. No.

09:48:16 8 Q. All right. That night when you were in the Langston's
09:48:20 9 apartment, did Sandra's husband Gerald Morris ever mention at
09:48:23 10 any point that he was in the window talking to Fuddy too?

09:48:27 11 MR. KULWIN: Judge, objection, lack of foundation.

09:48:29 12 THE COURT: Sustained. You got to lay the
09:48:32 13 foundation.

09:48:32 14 BY MR. LOEVY:

09:48:32 15 Q. All right. Let's take a look?

09:48:34 16 THE COURT: Lay the foundation regarding the
09:48:40 17 encounter to lay the point.

09:48:42 18 BY MR. LOEVY:

09:48:42 19 Q. Showing you page 329 of Gerald Morris' trial testimony, he
09:48:46 20 was asked the following questions. You didn't speak to the
09:48:48 21 police?

09:48:49 22 "ANSWER: I spoke to the police that night. No, but I
09:48:51 23 mean at the time.

09:48:52 24 "ANSWER: No. Okay. Now, that night, then police came
09:48:55 25 to your apartment and talked to Randy Langston, right?

09:48:58 1 "ANSWER: Yes.

09:48:59 2 "QUESTION: And you were there when they came and
09:49:01 3 talked to Randy?

09:49:02 4 "ANSWER: Yes, I was there.

09:49:04 5 You were the police who came to the Langston's
09:49:06 6 apartment the night of the shooting and talked to Randy
09:49:08 7 Langston, correct

09:49:09 8 A. Talked to Randy Langston?

09:49:11 9 Q. Yes.

09:49:11 10 A. Oh, yes.

09:49:15 11 Q. All right. And there were other people present in the
09:49:19 12 apartment, were there not?

09:49:20 13 A. Yes.

09:49:20 14 Q. And anybody who had relevant information, you wrote down
09:49:24 15 that information, correct?

09:49:26 16 A. Yes.

09:49:26 17 Q. All right. Did Gerald Morris at any time mention, did
09:49:32 18 anybody else in the apartment mention they were actually in
09:49:34 19 the window with Sandra at the time?

09:49:35 20 MR. KULWIN: Judge, I am going to object as to which.

09:49:38 21 THE COURT: Overruled.

09:49:39 22 THE WITNESS: I did not talk to Gerald Morris.

09:49:41 23 BY MR. LOEVY:

09:49:42 24 Q. All right. Did Sandra ever mention that her husband
09:49:45 25 Gerald was in the window with her?

09:49:46 1 A. She did not mention anybody being in the window with her.

09:49:50 2 Q. All right. If she had, you certainly would have written

09:49:52 3 it down, correct?

09:49:53 4 A. Yes.

09:49:53 5 Q. And during the course of this interview, are you confident

09:49:57 6 that you asked the kinds of questions that would determine --

09:50:02 7 that were intended to determine who, what, where and when?

09:50:05 8 A. Yes.

09:50:05 9 Q. Now, you did work third shift, right?

09:50:09 10 A. Yes.

09:50:09 11 Q. So you would have been at night, right?

09:50:11 12 A. We would have started at 4:30 roll call and real shift

09:50:15 13 would have started about 5:00 o'clock.

09:50:17 14 Q. When Gerald testified about police coming by that night,

09:50:20 15 you were working the nights, right?

09:50:21 16 A. When Gerald Morris came by?

09:50:25 17 Q. No, the testimony I showed you said the police came that

09:50:28 18 night and talked to Randy?

09:50:29 19 A. Yes.

09:50:29 20 Q. You were working nights, correct?

09:50:31 21 A. Yes.

09:50:31 22 Q. All right. Take a look at Gerald's testimony on page 330.

09:50:35 23 He said, did you then tell the police what you had seen

09:50:38 24 earlier that day?

09:50:39 25 "ANSWER: I told them I had seen something, and they

09:50:42 1 said, all right, we will contact. And I didn't hear from them
09:50:44 2 until a year later.

09:50:46 3 All right. And showing you his testimony at page 361
09:50:49 4 and 362, did you talk to some police later that night?

09:50:53 5 "ANSWER: Yes.

09:50:54 6 "QUESTION: Where was that?

09:50:56 7 "ANSWER: That was at my apartment.

09:50:58 8 "QUESTION: Did you tell the police what you had scene?

09:51:01 9 "ANSWER: Yes, I today them what I had seen and I today
09:51:03 10 them this if they would pick anyone, then there was an
09:51:06 11 objection. Did you indicate whether you could identify the
09:51:09 12 guys if you saw them?

09:51:10 13 "ANSWER: Yes.

09:51:10 14 "QUESTION: What did you tell them?

09:51:12 15 "ANSWER: I told them I can identify someone.

09:51:15 16 "QUESTION: Did the police leave then?

09:51:17 17 "ANSWER: Yes. They said they would contact me

09:51:19 18 "QUESTION: You were still living in the building when
09:51:22 19 they left?

09:51:23 20 "ANSWER: Yes. My question to you is that didn't
09:51:25 21 happen

09:51:26 22 A. I did not talk to Gerald Morris.

09:51:28 23 Q. And if Gerald Morris, if anybody in that apartment had
09:51:30 24 told you they had seen something, would you have written it
09:51:33 25 down, right?

09:51:33 1 A. Yes.

09:51:33 2 Q. And showing you page 46, Gerald claimed at the 2009 trial
09:51:48 3 at lines 15 through 17, you spoke to that officer for
09:51:51 4 approximately 10, 15 minutes that night?

09:51:54 5 "ANSWER: Yes. Do you see that

09:51:57 6 A. Yes.

09:51:57 7 Q. That wasn't true, was it?

09:51:58 8 A. No, I did not speak to Gerald Morris.

09:52:00 9 Q. And if you had, you would have made notes, right?

09:52:02 10 A. Yes.

09:52:02 11 Q. Let's look at Gerald's testimony from the first criminal
09:52:14 12 trial about what he was doing shortly before the shooting.

09:52:18 13 This is page 288. Gerald eventually became a witness against
09:52:21 14 Mr. Fields, did you know that?

09:52:22 15 A. No.

09:52:22 16 Q. All right. This is page 288. Now, I want to direct your
09:52:25 17 attention specifically to April 28th, 84, about 10:00 o'clock
09:52:29 18 in the morning. Can you tell the Court where you were about
09:52:31 19 10:00 o'clock that morning?

09:52:32 20 "ANSWER: I was looking out the window talking to
09:52:34 21 Fuddy.

09:52:35 22 "QUESTION: When you say you were talking to Fuddy who
09:52:37 23 was Fuddy?

09:52:38 24 "ANSWER: That's Jerome Smith

09:52:40 25 "QUESTION: Was Fuddy a friend of yours?

09:52:43 1 "ANSWER: Yes

09:52:43 2 "QUESTION: How long had you known Fuddy?

09:52:45 3 "ANSWER: I had known him about five years

09:52:47 4 "QUESTION: When you say you were looking occupant the

09:52:48 5 window talking to Fuddy, would that be the window on the first

09:52:51 6 floor or second floor of your apartment

09:52:54 7 "ANSWER: Second floor.

09:52:55 8 "QUESTION: And as you look out the window, what can

09:52:58 9 you see?

09:52:58 10 "ANSWER: I can see everything.

09:52:59 11 "QUESTION: Is there a parking lot behind your

09:53:01 12 building?

09:53:02 13 "ANSWER: Yes.

09:53:02 14 "QUESTION: Could you see the parking lot?

09:53:07 15 "ANSWER: Yes

09:53:08 16 "QUESTION: How long did you go talk to Fuddy?

09:53:10 17 "ANSWER: A couple minutes.

09:53:10 18 "QUESTION: And did you see where Fuddy went after you

09:53:10 19 finished talking to him?

09:53:10 20 "ANSWER: Yes, up the breezeway."

09:53:12 21 Do you see that testimony?

09:53:13 22 A. Yes.

09:53:14 23 Q. All right. Showing you page 318 and 319, when you were

09:53:18 24 looking out the window, was anybody looking out the same

09:53:21 25 window, you were?

09:53:22 1 "ANSWER: Yes, that's my girlfriend. I was looking out
09:53:26 2 the window with her.
09:53:27 3 "QUESTION: What was her name?
09:53:29 4 "ANSWER: Sandra Langston.
09:53:30 5 "QUESTION: Sandra Langston lived in the same
09:53:33 6 apartment?
09:53:33 7 "ANSWER: Yes
09:53:34 8 "QUESTION: 106
09:53:35 9 "ANSWER: Yes
09:53:36 10 "QUESTION: Randy Langston lived there?
09:53:38 11 "ANSWER: Yes
09:53:39 12 "QUESTION: Eric Langston?
09:53:40 13 "ANSWER: Yes James Langston
09:53:42 14 "ANSWER: Yes
09:53:44 15 "QUESTION: And you lived there?
09:53:45 16 "ANSWER: Yes
09:53:46 17 "QUESTION: Was Sandra speaking with Fuddy?
09:53:50 18 "ANSWER: Yes.
09:53:51 19 "QUESTION: Was she leaning out the window?
09:53:52 20 "ANSWER: Yes.
09:53:53 21 "QUESTION: Were you leaning out the window?
09:53:56 22 "ANSWER: Yes, both of us.
09:53:58 23 "QUESTION: So both of you were looking out the window
09:54:01 24 but you were talking to Fuddy?
09:54:03 25 "ANSWER: I was talking to Fuddy.

09:54:04 1 "QUESTION: She had no conversation with Fuddy; is that
09:54:06 2 correct?

09:54:06 3 "ANSWER: Yes.

09:54:08 4 "QUESTION: And there was nobody else in the playground
09:54:10 5 or parking lot at that time?

09:54:11 6 "ANSWER: No.

09:54:12 7 "QUESTION: Now after Fuddy left and went into the
09:54:14 8 breezeway, you went to get a T-shirt on or a shirt?

09:54:18 9 "ANSWER: No, I stayed in the window.

09:54:20 10 "QUESTION: For how long?

09:54:20 11 "ANSWER: Oh, about couple of minutes

09:54:23 12 "QUESTION: And after a couple minutes, you say you saw
09:54:26 13 the defendants in this case?

09:54:27 14 "ANSWER: Yes.

09:54:28 15 Do you see that testimony, sir?

09:54:30 16 A. Yes.

09:54:31 17 Q. This is inconsistent with what Sandra Langston told you,
09:54:34 18 isn't it?

09:54:34 19 MR. KULWIN: Judge, I would object.

09:54:35 20 THE COURT: Sustained. It's argumentative.

09:54:39 21 BY MR. LOEVY:

09:54:45 22 Q. There is no doubt in your mind that Sandra never mentioned
09:54:48 23 that Gerald was next to her when she was having the
09:54:51 24 conversation with Fuddy, correct?

09:54:52 25 MR. KULWIN: Objection, asked and answered.

09:54:53 1 THE COURT: Overruled. You can answer.

09:54:55 2 THE WITNESS: Sandra, never, no.

09:54:56 3 BY MR. LOEVY:

09:54:56 4 Q. So doubt?

09:54:57 5 A. No doubt.

09:54:57 6 Q. Did you know two years later that Gerald was going to be
09:55:05 7 substituted for Sandra as the witness?

09:55:07 8 MR. KULWIN: Judge, I am going to object.

09:55:08 9 THE COURT: Sustained to the form of the question.

09:55:10 10 MR. KULWIN: Ask to strike.

09:55:10 11 THE COURT: I sustained the objection. That's all I
09:55:13 12 need to do. I have advised the jury about a million times
09:55:15 13 that questions aren't evidence.

09:55:17 14 BY MR. LOEVY:

09:55:17 15 Q. All right. Showing you pages 319 and 320 of Gerald
09:55:20 16 Morris's testimony, now, after Fuddy left and went into the
09:55:23 17 breezeway, you went to get a T-shirt or a shirt? I think we
09:55:28 18 read this, sorry.

09:55:28 19 That's -- yes, we read this.

09:55:31 20 Then the next page, well, this question we did not
09:55:36 21 read. How much time passed from the time Fuddy went into the
09:55:39 22 breezeway until you saw these two fellows? Then on page 32?

09:55:44 23 "ANSWER: I'd say about a good five minutes.

09:55:47 24 "QUESTION: About five minutes passed after Fuddy went
09:55:51 25 out into the breezeway, correct?

09:55:52 1 "ANSWER: Yes

09:55:53 2 "QUESTION: During that five minutes, did anybody else
09:55:55 3 walk along that sidewalk?

09:55:56 4 "ANSWER: No

09:55:57 5 "QUESTION: The only other two people that you saw were
09:56:00 6 the two people that you've identified in court today, and that
09:56:00 7 was Mr. Fields and Hawkins?

09:56:00 8 "ANSWER: Yes."

09:56:05 9 Do you see that testimony, sir?

09:56:05 10 A. Yes.

09:56:06 11 Q. Did Sandra tell you that a full five minutes went by
09:56:11 12 between when she saw those two men were walking behind Fuddy
09:56:15 13 and when the shots were fired?

09:56:17 14 A. She just said a short time. That was it.

09:56:19 15 Q. And then finally, showing you page 350 and 351, did injure
09:56:25 16 sister, I'm sorry, I'm not sure of the relationship, did
09:56:28 17 Sandra Langston stay in that window for five minutes or by
09:56:32 18 the window.

09:56:33 19 "ANSWER: After I left?

09:56:35 20 "ANSWER: No. From the time Fuddy left until the five
09:56:37 21 minutes passed that you saw, you say these two men, did Sandra
09:56:42 22 Langston also stand by that window for five more minutes?

09:56:45 23 "ANSWER: Yes, she stood there.

09:56:47 24 "QUESTION: Did you talk to her? Did Fuddy talk to
09:56:49 25 her?

09:56:50 1 "QUESTION: Were you talking to Sandra? The answer is

09:56:54 2 um-hmm. Do you see that testimony

09:56:56 3 A. Yes.

09:56:57 4 MR. KULWIN: Judge, objection as to what's

09:56:59 5 inconsistent.

09:57:01 6 THE COURT: Objection sustained. Form of the

09:57:02 7 question.

09:57:03 8 BY MR. LOEVY:

09:57:03 9 Q. All right. Showing you Mr. Morris' testimony at page 292,

09:57:09 10 this is where he makes at trial. Did you see anyone or

09:57:12 11 anything unusual as you sat in that window after Fuddy left?

09:57:16 12 "ANSWER: Yes. What did you see? I seen two mails

09:57:19 13 walk right behind him.

09:57:21 14 "QUESTION: Did you see where they were coming from?

09:57:23 15 "ANSWER: No, I didn't.

09:57:24 16 "QUESTION: Where is the first place you saw them?

09:57:26 17 "ANSWER: Entering from the parking lot

09:57:29 18 "QUESTION: Which way were they walking when you first

09:57:32 19 saw them?

09:57:33 20 "ANSWER: Walking in the same direction Fuddy was

09:57:35 21 going. Did you see that testimony, sir

09:57:37 22 A. Yes.

09:57:37 23 Q. And then on page 298, while you were in the next room

09:57:41 24 getting your shirt on, what happened?

09:57:43 25 "ANSWER: I heard several gunshots, I looked out the

09:57:46 1 side window and I seen the same defendants running back out.

09:57:49 2 None of that was told to you that night, correct

09:57:51 3 A. Correct.

09:57:52 4 Q. All right. Let's fast forward a year. O'Callaghan picks
09:58:06 5 up the investigation. Did you know that the case was being
09:58:09 6 reinvestigated in 1985, a year later?

09:58:11 7 A. No, I did not.

09:58:12 8 Q. Did Mr. O'Callaghan ever come to you and ask you any
09:58:15 9 questions about why in your report you had said it was Sandra
09:58:19 10 and she hadn't mentioned Gerald?

09:58:21 11 A. No.

09:58:21 12 Q. Were you at all involved in the switch from Sandra to
09:58:33 13 Gerald?

09:58:34 14 MR. MICHALIK: Objection, your Honor.

09:58:35 15 THE COURT: Sustained to the form of the question.

09:58:36 16 BY MR. LOEVY:

09:58:37 17 Q. Did you have any involvement a year later when Gerald went
09:58:41 18 to court and said I was the one in the window with Sandra?

09:58:44 19 MR. KULWIN: Judge, I am going to object to
09:58:46 20 argumentative on all of this.

09:58:50 21 THE COURT: Overruled on that question. You can
09:58:55 22 answer.

09:58:55 23 THE WITNESS: No.

09:58:56 24 BY MR. LOEVY:

09:59:04 25 Q. All right. You were in the Langston's apartment, correct?

09:59:06 1 A. Yes.

09:59:07 2 Q. The window in the back of the Langston's apartment, you
09:59:11 3 can't see the shooting, correct?

09:59:12 4 A. I don't recall.

09:59:16 5 Q. All right. Showing you page 295 of Gerald's testimony. I
09:59:20 6 am going to show you what's been marked as people's Exhibit 15
09:59:24 7 for identification, Gerald. It's also a picture of your
09:59:30 8 apartment.

09:59:31 9 "ANSWER: Yes.

09:59:32 10 "QUESTION: And do you see in the window that you --
09:59:35 11 where you were when you were talking to Fuddy?

09:59:36 12 "ANSWER: Yes.

09:59:37 13 "QUESTION: Is that the same window you saw the two
09:59:39 14 individuals walk by?

09:59:40 15 "ANSWER: Yes

09:59:41 16 "QUESTION: Would you circle that window, please, now,
09:59:45 17 do you see the entrance to the breezeway

09:59:47 18 "ANSWER: Yes. You see that testimony

09:59:49 19 A. Yes.

09:59:49 20 Q. I'm going to show you Plaintiff's Exhibit 219E which is
09:59:52 21 also state Exhibit 215, no, state Exhibit 15. This is the
09:59:58 22 Langston's window in the very back of the building, is it not?
10:00:03 23 Does that refresh your recollection?

10:00:05 24 A. I don't recall it.

10:00:08 25 Q. But you do recall from looking at your reports that

10:00:13 1 whatever they were claiming to have seen, it was in the back,
10:00:16 2 not the front of the building, correct?
10:00:18 3 A. In the report, it was from a bedroom window.
10:00:24 4 Q. All right. You also interviewed Randy Langston, correct?
10:00:26 5 A. Yes.
10:00:28 6 Q. And did you take notes?
10:00:29 7 A. Yes.
10:00:30 8 Q. And he did tell you what he was doing when he heard the
10:00:34 9 shots, correct?
10:00:35 10 A. Yes.
10:00:36 11 Q. And you have read the reports to refresh your
10:00:39 12 recollection?
10:00:39 13 A. Yes.
10:00:39 14 Q. What did Randy tell you on the night of the shooting he
10:00:41 15 was doing when the shots happened?
10:00:42 16 A. Randy related that he was playing baseball across the
10:00:49 17 street from 706 East 39th Street with his brother James and a
10:00:52 18 friend by the name of Carlos.
10:00:53 19 Q. Playing baseball, right?
10:00:55 20 A. Yes.
10:00:55 21 Q. Are you good at what you do?
10:00:56 22 A. I'm sorry?
10:00:57 23 Q. Are you good at what you do or did?
10:01:00 24 A. Am I good?
10:01:01 25 Q. Yeah.

10:01:02 1 A. I'm confident in what I do.

10:01:05 2 Q. All right. Did you get that detail right?

10:01:06 3 A. Playing baseball?

10:01:09 4 Q. Yeah.

10:01:10 5 A. Playing baseball across the street, yes.

10:01:12 6 Q. That's the kind of thing you would have taken care to

10:01:15 7 record accurately, correct?

10:01:16 8 A. Yes.

10:01:16 9 Q. Because he could later become an eyewitness and then it

10:01:21 10 would become very important what he was doing, right?

10:01:23 11 A. Yes.

10:01:23 12 Q. If he had said I was getting ready to play baseball and I

10:01:27 13 was standing on the sidewalk, would you have written that

10:01:28 14 down?

10:01:29 15 A. I would have written down whatever he told me.

10:01:31 16 Q. All right. Let's look at what he did tell you and what

10:01:34 17 you did write down. This is Plaintiff's Exhibit 86, page 14.

10:01:38 18 Randy was interviewed and related the following. He was

10:01:40 19 playing baseball across the street from 705 East 39th with his

10:01:44 20 brother James and friend Carlos when he observed a man with a

10:01:47 21 read ski masks shooting at the victims. That's the first half

10:01:50 22 of what he told you, correct?

10:01:51 23 A. Yes.

10:01:51 24 Q. Now, I want to smoke us on the a man. Is there any doubt

10:01:56 25 in your mind that Randy told you he saw one and only one

10:02:01 1 shooter?

10:02:02 2 A. He said a man.

10:02:03 3 Q. That's an important detail, correct?

10:02:05 4 A. Yes.

10:02:06 5 Q. And there is no doubt in your mind that he did not say he

10:02:08 6 saw two shooters, correct?

10:02:11 7 A. He never mentioned a second shooter, a second person.

10:02:16 8 Q. And that was the night of the shooting?

10:02:17 9 A. Yes.

10:02:17 10 Q. If he had said I saw two people, what would you have

10:02:21 11 written down?

10:02:21 12 A. It would have been written down as two people.

10:02:24 13 Q. All right. You also interviewed James Langston, correct?

10:02:32 14 A. Yes.

10:02:32 15 Q. All right. You have seen the investigative file in this

10:02:37 16 case, have you not, at your deposition, you were shown the

10:02:42 17 investigative file?

10:02:42 18 THE COURT: Holding up Exhibit 1.

10:02:45 19 MR. LOEVY: Plaintiff's Exhibit 1.

10:02:46 20 BY MR. LOEVY:

10:02:47 21 Q. You're familiar with the investigative file, correct?

10:02:49 22 A. The investigative file?

10:02:50 23 Q. All right. At your deposition, you were shown it, right?

10:02:53 24 A. I don't recall.

10:02:55 25 Q. All right. Showing you a copy of Plaintiff's Exhibit 1,

10:03:05 1 the memo, this is Plaintiff's Exhibit 1, page 104. This is a
10:03:17 2 memo from you and your partner minute owing and Bogdalek,
10:03:24 3 correct?
10:03:24 4 A. Yes.
10:03:24 5 Q. And it's not dated, is it? I will give you a copy so you
10:03:28 6 have the whole thing in front of you you said no time to leave
10:03:44 7 a supp, you were referring to a supplementary report, correct?
10:03:47 8 A. My partner wrote this, yes.
10:03:50 9 Q. All right. It said that James Langston age 14 was
10:03:54 10 interviewed because he witnessed the murders, right?
10:03:57 11 A. Yes.
10:03:57 12 Q. He said I was playing baseball across the street?
10:03:59 13 A. Yes.
10:03:59 14 Q. He said the offenders were wearing masks to cover their
10:04:04 15 faces to conceal that I have identity and he saw them flee in
10:04:08 16 a blue Cadillac, right?
10:04:09 17 A. Yes.
10:04:09 18 Q. He saw the men in a car, right?
10:04:12 19 A. Yes.
10:04:12 20 Q. The person in the front seat was the brother of Ricky
10:04:17 21 Baldwin who was murdered last summer, right?
10:04:20 22 A. Yes.
10:04:20 23 Q. It says see our notes for more details, right?
10:04:23 24 A. Yes.
10:04:24 25 Q. Now, that was a genuine lead, was it not?

10:04:29 1 A. Yes.

10:04:29 2 Q. Was that the kind of information that the policies and
10:04:33 3 practices of the police department required you to transfer
10:04:34 4 from the street file into supplementary reports?

10:04:37 5 A. Yes.

10:04:38 6 Q. Now, that information about one of the people being in the
10:04:42 7 car being related to a guy named Ricky Baldwin was murdered,
10:04:46 8 that did not make it into the supp report, did it?

10:04:49 9 A. No, it did not.

10:04:50 10 Q. And the supp report is what gets produced to the criminal
10:04:52 11 defendants, correct?

10:04:53 12 A. Yes.

10:04:53 13 Q. That was important information, was it not, what you wrote
10:05:04 14 in the memo, what you and why your partner wrote in the memo?

10:05:09 15 A. What my partner wrote in the memo, yes.

10:05:11 16 Q. You have no explanation for why this important information
10:05:14 17 did not get in the supp report, do you?

10:05:16 18 A. The information was investigated.

10:05:18 19 Q. Okay. You have no explanation for why it didn't get into
10:05:22 20 the supp report, did it?

10:05:23 21 A. No, it should have gone. In retrospect, it should have
10:05:26 22 been in the report.

10:05:27 23 Q. In the mid '80s, did the policy and practice of the police
10:05:36 24 department require to you withhold this investigation?

10:05:38 25 A. We didn't withhold it. We investigated.

10:05:40 1 Q. Isn't it the practice in the mid '80s was you were allowed
10:05:44 2 to keep that information into an investigative file until you
10:05:47 3 determined if it was going to make it into a supp report at
10:05:50 4 the time, correct?

10:05:51 5 A. Repeat that again.

10:05:52 6 Q. At the time, say in 1984, it was your understanding that
10:05:57 7 the practice of the department was you were allowed to keep
10:06:01 8 information like this in memos and investigative files without
10:06:05 9 putting into the official reports until you determined whether
10:06:08 10 or not it was going to be part of your case or not, right?
10:06:12 11 That was the practice?

10:06:13 12 A. One more time with that, please.

10:06:17 13 Q. Sure.

10:06:17 14 There was -- the department had practices and
10:06:20 15 policies regarding murder investigations, right?

10:06:22 16 A. Yes.

10:06:22 17 Q. Okay. And the practice at the time, 1984, permitted you
10:06:28 18 to leave the kind of information that we have been talking
10:06:31 19 about in memos and not put it into supp reports until such
10:06:35 20 time as you decided who was going to be prosecuted, correct?

10:06:38 21 MR. MICHALIK: Objection, Judge.

10:06:38 22 THE COURT: Overruled. You can answer.

10:06:39 23 THE WITNESS: Until it was investigated, yes. We did
10:06:46 24 investigate this information.

10:06:47 25 BY MR. LOEVY:

10:06:47 1 Q. Let's talk about that.

10:06:48 2 You were responsible for tracking down some of the
10:06:55 3 leads in the investigative file, correct?

10:06:56 4 A. Yes.

10:06:58 5 Q. Now, you went and found photos of the Baldwin brothers,
10:07:04 6 right?

10:07:04 7 A. Yes.

10:07:06 8 Q. Because you know from the records that James was saying
10:07:09 9 that one of the Baldwin brothers got murdered so the suspects
10:07:14 10 were the other Baldwin brothers, somebody had seen a Baldwin
10:07:17 11 brother in the get away car, right?

10:07:19 12 A. Yes.

10:07:19 13 Q. All right. You could only find photos of which two
10:07:23 14 Baldwins, do you know from the records?

10:07:24 15 A. Paul and Sean Baldwin.

10:07:27 16 Q. Which Baldwin whose photo you couldn't find?

10:07:30 17 A. Whose -- which we couldn't find at the time?

10:07:35 18 Q. Yes.

10:07:36 19 A. Those were the only two we could find.

10:07:38 20 Q. Sean and Paul, you found their photos?

10:07:41 21 A. Yes.

10:07:41 22 Q. Tell the jury which Baldwin photo you couldn't find, it
10:07:45 23 was Darryl, wasn't it?

10:07:46 24 A. Darryl's name was not brought up. We couldn't find
10:07:49 25 anything on Darryl. That was brought up later in the

10:07:51 1 investigation.

10:07:51 2 Q. You did not show any witnesses Darryl Baldwin's photo,
10:07:55 3 correct?

10:07:55 4 A. If we jump ahead to when Darryl was brought into the
10:07:58 5 investigation, we could not find a photo.

10:08:00 6 Q. All right. All I'm asking you is James Langston ruled out
10:08:04 7 Sean and Paul, right?

10:08:05 8 A. Yes.

10:08:05 9 Q. Okay. James Langston was not shown a photo of Darryl,
10:08:09 10 that's all I'm asking, correct?

10:08:11 11 A. Yes.

10:08:11 12 Q. And he never was, to your knowledge, right?

10:08:13 13 A. Not to my knowledge, no.

10:08:14 14 Q. And so we'll never know if Darryl Baldwin was the guy
10:08:19 15 James saw in the get away car, correct?

10:08:21 16 A. One more time.

10:08:29 17 Q. There is no way to know if the guy James saw, the Baldwin
10:08:35 18 brother James saw in the get away car was Darryl Baldwin,
10:08:39 19 right?

10:08:39 20 MR. MICHALIK: Objection, Judge.

10:08:39 21 THE COURT: Rephrase the question.

10:08:40 22 MR. LOEVY: I will just move on it, your Honor.

10:08:43 23 BY MR. LOEVY:

10:08:43 24 Q. You also followed up some leads about the Edwards
10:08:46 25 brothers. Do you remember that?

10:08:47 1 A. Yes.

10:08:47 2 Q. Do you remember why the Edwards brothers were suspects?

10:08:51 3 A. There was an anonymous tip on the Edwards brothers,
10:08:57 4 anonymous tip meaning there was no one to get back to with the
10:09:00 5 information. We check out the information, the information
10:09:04 6 was that someone overheard a conversation, do you want me to
10:09:09 7 read it off this?

10:09:10 8 Q. The gist was that Delbert Evans had been shot, was it the
10:09:15 9 night before Fuddy was murdered, right?

10:09:16 10 A. Delbert Edwards?

10:09:19 11 Q. Yeah, different Edwards brother, different Edwards --

10:09:23 12 A. I -- I am not sure about how that investigation went.

10:09:26 13 Q. The point was somebody heard Lawrence and Marshall in a
10:09:31 14 stairwell saying they were going to get a gun, put on masks
10:09:33 15 and kill Fuddy, correct?

10:09:35 16 A. Yes.

10:09:36 17 Q. All right. So that was a live lead, right?

10:09:39 18 A. Yes, it was.

10:09:39 19 Q. That didn't make it into the supp report, did it?

10:09:42 20 A. It was in our GPR report.

10:09:46 21 Q. The fact that --

10:09:49 22 MR. KULWIN: Objection. Can the witness finish the
10:09:51 23 answer?

10:09:51 24 BY MR. LOEY:

10:09:52 25 Q. The fact that --

10:09:52 1 THE COURT: Yeah, don't cut off the answer.

10:09:55 2 BY MR. LOEVY:

10:09:58 3 Q. Are you saying this was in a GPR, sir?

10:09:58 4 THE COURT: Do you remember what you were going to
10:09:59 5 say at this point?

10:10:03 6 Okay. Just proceed.

10:10:03 7 BY MR. LOEVY:

10:10:05 8 Q. This was not in any GPR, the fact that Lawrence and
10:10:09 9 Marshall were overheard talking about murdering Fuddy, that
10:10:12 10 was not in the GPR, was it?

10:10:13 11 A. Not the entire -- not the entire conversation, no.

10:10:16 12 Q. I mean, nothing about the fact that they were going to get
10:10:18 13 masks and a gun and shoot Fuddy went into a GPR, did it?

10:10:22 14 A. We did check out that tip.

10:10:23 15 Q. The question was did it get into a GPR?

10:10:26 16 A. Our final result, the investigation, yes.

10:10:31 17 Q. The final result --

10:10:32 18 A. We checked out the anonymous tip.

10:10:35 19 Q. All right. Tell the jury what you did to determine
10:10:38 20 whether Marshall and Lawrence were overheard in a stairwell
10:10:43 21 saying they were going to get Fuddy the night before the
10:10:46 22 shooting?

10:10:47 23 A. Okay. Once we received this information, we obtained
10:10:52 24 pictures of the two Marshall and Lawrence Edwards brothers for
10:10:59 25 purposes of identification so we'd know who we were talking to

10:11:04 1 when we went out looking for them. The question was about
10:11:08 2 their whereabouts on the date and time regarding this
10:11:11 3 information. We were able to obtain photos of them, we were
10:11:15 4 able to locate them, we interviewed them, we talked to them in
10:11:19 5 different -- at different times when we went up to their
10:11:25 6 apartment and they told us each one told us that they were
10:11:28 7 with family members at the time. We were able to verify that
10:11:31 8 information after they told us who they were with, Lawrence
10:11:34 9 was with his mother, Barbara at 5132 south Lowell and Marshall
10:11:42 10 was with his grandmother, fan /AOE /TKAPBZ worth and a cousin
10:11:47 11 and another aunt I believe and they were in an apartment. We
10:11:52 12 talked to them, they said yes, he spent the night with us when
10:11:55 13 this incident went down.

10:11:57 14 Q. And then you determined that it was a dead lead, you're
10:12:00 15 saying?

10:12:01 16 A. Yeah, there was no one to get back to. Because it was an
10:12:01 17 anonymous tip, there was no one else --

10:12:06 18 Q. I just asked if it was a dead lead.

10:12:06 19 MR. KULWIN: Could he finish?

10:12:07 20 THE COURT: The answer was extremely nonresponsive.
10:12:10 21 The answer is stricken. The jury is directed to disregard it.

10:12:13 22 Please answer the questions directly.

10:12:15 23 Ask the question again if you'd like to.

10:12:18 24 BY MR. LOEVY:

10:12:18 25 Q. All right. You're saying, if I understand it, that

10:12:19 1 because the man's mother and grandmother said he was with us,
10:12:22 2 you considered the lead date dead?

10:12:24 3 A. At that point, yes, there was no more information.

10:12:27 4 THE COURT: The answer is yes. Thank you.

10:12:28 5 BY MR. LOEVY:

10:12:29 6 Q. All right. If you considered that a checked out lead, why
10:12:32 7 didn't you put in a supp report, we talked to the mother, we
10:12:35 8 talked to the grandmother, they have an alibi, and produce
10:12:38 9 that supp report in the criminal justice system, why didn't
10:12:41 10 you make a police report?

10:12:43 11 A. We made out a report. I don't know if it's called fireman
10:12:49 12 or GPR saying that we followed up on this information.

10:12:51 13 Q. All of that is in the street file, correct?

10:12:54 14 A. I don't know if it's in there.

10:12:57 15 Q. Everything you just described to the jury from memory,
10:13:01 16 should that have been in an official supp report?

10:13:04 17 A. An official supp report?

10:13:13 18 Q. Right. If you could focus on that question, sir.

10:13:17 19 A. Well, what I am trying to say is it was put in a report,
10:13:26 20 not in a supp report, though.

10:13:28 21 Q. Okay. At the policies and practices at the time, should
10:13:32 22 the information you just described to the jury, was there a
10:13:34 23 rule that that had to go into a supp report that was going to
10:13:37 24 be produced to the criminal defendants?

10:13:39 25 A. It should have been put in a supp.

10:13:42 1 Q. All right. And it was not, correct?

10:13:44 2 A. Yes.

10:13:44 3 Q. Correct?

10:13:51 4 A. Yes.

10:13:51 5 Q. All right. I am going to show you Plaintiff's Exhibit 1,

10:13:54 6 page 106. Without belabor organize because the jury has heard

10:13:58 7 about Edward Stewart, do you remember how he was a suspect in

10:14:01 8 the crime?

10:14:01 9 A. Yes, anonymous tip.

10:14:03 10 Q. All right. And he told you he worked at McDonald's,

10:14:06 11 right?

10:14:07 12 A. That is correct.

10:14:07 13 Q. And you wanted to verify that his alibi, he said during

10:14:11 14 the shooting he was working at McDonald's, right?

10:14:14 15 A. Yes.

10:14:14 16 Q. And you couldn't verify his alibi because McDonald's was

10:14:18 17 closed when you checked, right?

10:14:20 18 A. That is correct.

10:14:20 19 Q. All right. And so that was the end of checking out the

10:14:23 20 alibi, wasn't it?

10:14:24 21 A. Could you lower that down a little? Just a little?

10:14:27 22 Q. I'll give you the whole page.

10:14:29 23 A. Okay.

10:14:32 24 Q. The question pending was when you called McDonald's and

10:14:36 25 McDonald's was closed you made no further attempt to

10:14:40 1 corroborate Mr. Stewart's alibi, correct?

10:14:43 2 A. We did make an attempt, making a phone call. McDonald's
10:14:47 3 at 30 plus years ago wasn't a 24/7 operation, so he would not
10:14:54 4 have been there. Somebody picked up the phone and said it was
10:14:57 5 closed.

10:14:57 6 Q. We established that.

10:14:58 7 THE COURT: The question is if you did anything else
10:15:01 8 after that.

10:15:01 9 THE WITNESS: Yes, we put information here on the
10:15:04 10 first of May, on our general progress report, information for
10:15:09 11 all the watches, that's everybody in the area that would be
10:15:16 12 looking into this investigation because we were going on our
10:15:18 13 days off and the information there was for anybody to check on
10:15:23 14 there.

10:15:23 15 BY MR. LOEVY:

10:15:24 16 Q. All right. You didn't do anything else?

10:15:25 17 A. And I don't know if it was done.

10:15:27 18 Q.

10:15:30 19 A. Pardon.

10:15:30 20 Q. You don't know if anything else was done?

10:15:33 21 A. No.

10:15:33 22 Q. This supp report, this was not in the official file,
10:15:37 23 correct?

10:15:38 24 MR. MICHALIK: Objection, Judge. Vague as to
10:15:40 25 official file.

10:15:42 1 THE COURT: Rephrase the question, please.

10:15:44 2 BY MR. LOEVY:

10:15:44 3 Q. The supp report -- the GPR we are talking about that you
10:15:47 4 have been describing, that was in Plaintiff's Exhibit 1, the
10:15:49 5 investigative notes, correct, if you know?

10:15:53 6 A. All this information was turned in.

10:15:57 7 THE COURT: Do you know what file it was kept in?
10:16:00 8 That's the question.

10:16:00 9 THE WITNESS: No. It would have been -- this would
10:16:06 10 have been in the investigative file that's kept in our office.

10:16:11 11 BY MR. LOEVY:

10:16:12 12 Q. It would not have been in the permanent retention file
10:16:15 13 that's given to defendants?

10:16:16 14 A. I don't know if it was.

10:16:17 15 Q. Was it the practice at the time?

10:16:19 16 A. The practice was to turn in our reports to our supervisor
10:16:22 17 who would read them and approve them and then have someone
10:16:29 18 place them into the investigative file.

10:16:30 19 Q. All right. At some point you got a subpoena to testify at
10:16:33 20 Mr. Fields' criminal trial, correct?

10:16:35 21 A. Yes.

10:16:35 22 Q. He was trying to call you for the defense, right?

10:16:38 23 A. Yes.

10:16:40 24 Q. He wanted to impeach Randy Langston, correct?

10:16:44 25 MR. MICHALIK: Objection, Judge.

10:16:45 1 THE COURT: Sustained.

10:16:46 2 BY MR. LOEVY:

10:16:46 3 Q. Was it your understanding --

10:16:47 4 MR. LOEVY: May I?

10:16:48 5 THE COURT: Yes.

10:16:49 6 BY MR. LOEVY:

10:16:49 7 Q. Was it your understanding the reason the defense wanted to
10:16:52 8 call you at the trial was to impeach the eyewitnesses at
10:16:54 9 trial, was that your understanding?

10:16:56 10 A. I don't know what their intentions were.

10:16:57 11 Q. All right. In preparing for the trial, you reviewed the
10:16:59 12 file, correct?

10:17:00 13 A. I reviewed the file that was given to me, provided to me
10:17:03 14 by the state's attorney's office, yes.

10:17:04 15 Q. And you had already told the jury that Randy, when he gave
10:17:07 16 you a description, you took notes, correct?

10:17:10 17 A. Yes.

10:17:11 18 Q. And Randy told you looking at the rest of your report that
10:17:15 19 as they rolled up the mask over the face and ran away, right,
10:17:19 20 the one guy?

10:17:19 21 A. Yes.

10:17:21 22 Q. And what Randy told you he saw you wrote down, correct?

10:17:25 23 A. Yes.

10:17:25 24 Q. So when you got subpoenaed for Nate's criminal trial, why
10:17:30 25 didn't you bring those notes with you?

10:17:32 1 A. I didn't have copies of the notes.

10:17:36 2 Q. They were missing, weren't they?

10:17:39 3 A. I didn't have a copy.

10:17:42 4 Q. They were missing, weren't they?

10:17:44 5 A. I learned later they were missing, yes.

10:17:46 6 Q. All right. This is your testimony at the April 2004
10:17:58 7 proceeding?

10:17:58 8 THE COURT: By him?

10:17:59 9 MR. LOEVY: By him. Page 1609 through.

10:18:02 10 MR. KULWIN: Judge, I am going to object. I don't
10:18:04 11 think there is anything impeaching.

10:18:06 12 THE COURT: May I see it?

10:18:08 13 MR. LOEVY: 15 through 24.

10:18:12 14 THE COURT: Thank you. It's consistent. The
10:18:19 15 objection is sustained.

10:18:20 16 BY MR. LOEVY:

10:18:31 17 Q. When you got to court, you also noticed that the state's
10:18:34 18 attorney file in court was missing that memo you had written
10:18:39 19 about James Langston, correct, the one we talked about with
10:18:43 20 the description of the Baldwin brothers?

10:18:45 21 A. The only --

10:18:48 22 Q. That's true, right?

10:18:49 23 A. Yes.

10:18:49 24 Q. All right. So you knew that the state's attorney at the
10:18:52 25 criminal trial did not have all the documents, didn't you?

10:18:55 1 MR. MICHALIK: Objection, your Honor, foundation.

10:18:56 2 THE COURT: Yes, sustained.

10:19:00 3 BY MR. LOEVY:

10:19:01 4 Q. All right. You reviewed the file that the state's
10:19:03 5 attorney had relating to the case, correct?

10:19:05 6 A. I reviewed the file, the document that he handed me to
10:19:08 7 review and that was a copy of the supplementary report.

10:19:11 8 Q. And they handed you a copy of the investigative file at
10:19:17 9 the state's attorney's office, correct?

10:19:18 10 A. No, well, they handed me a copy of the supplementary
10:19:18 11 report.

10:19:25 12 Q. This is page 954 of the March proceeding in this case,
10:19:29 13 lines 9 through 21.

10:19:30 14 "QUESTION: Does that refresh your recollection as to
10:19:33 15 whether or not you reviewed the investigative file?

10:19:35 16 "ANSWER: I reviewed a file that the state's attorney's
10:19:38 17 office gave me. That's the file I reviewed.

10:19:41 18 "QUESTION: You reviewed the investigative file; is
10:19:43 19 that correct? You noticed that your handwritten notes were
10:19:45 20 missing isn't that correct?

10:19:47 21 "ANSWER: I guess my handwritten notes were missing.

10:19:49 22 "QUESTION: Were your partner's handwritten notes
10:19:53 23 missing as well?

10:19:53 24 "ANSWER: I believe so. I believe my supp was the only
10:19:55 25 report in there.

10:19:56 1 "QUESTION: And the two from memo was not in there
10:19:59 2 either?

10:20:00 3 "ANSWER: No."

10:20:01 4 Did you give those answers, sir?

10:20:03 5 A. Yes.

10:20:03 6 Q. All right. So you knew the state's attorney did not have
10:20:07 7 all the documents, correct?

10:20:09 8 MR. MICHALIK: Objection, Judge, foundation.

10:20:10 9 THE COURT: Sustained.

10:20:12 10 BY MR. LOEVY:

10:20:12 11 Q. Did you tell anybody that your notes and memo were
10:20:15 12 missing?

10:20:15 13 A. No, I did not.

10:20:16 14 Q. And the reason you didn't tell anybody that your notes and
10:20:18 15 memo were missing is because it was perfectly consistent with
10:20:22 16 the police department's practices at the time that all the
10:20:24 17 stuff was not getting turned over isn't that true?

10:20:27 18 MR. MICHALIK: Objection, Judge.

10:20:28 19 THE COURT: Overruled. You can answer the question.

10:20:30 20 THE WITNESS: Would you repeat the question, please?

10:20:32 21 BY MR. LOEVY:

10:20:32 22 Q. The reason you didn't bother owe strike that.

10:20:35 23 The reason you didn't raise with anybody that your
10:20:37 24 notes and memo were missing was because it was your
10:20:40 25 understanding of the practices at the time that the detectives

10:20:43 1 didn't have to turn over stuff like that; isn't that true?

10:20:47 2 A. No. I read --

10:20:50 3 THE COURT: The answer is no. The answer can stand.

10:20:53 4 Proceed.

10:20:53 5 BY MR. LOEVY:

10:20:53 6 Q. At some point a few years later, you got notice that Nate

10:20:57 7 had filed a lawsuit from death row, correct?

10:21:00 8 A. From death row?

10:21:02 9 Q. He filed a lawsuit, right?

10:21:04 10 A. Yes.

10:21:04 11 Q. Because he got convicted, right?

10:21:06 12 A. Yes.

10:21:06 13 Q. You were one of the detectives he named?

10:21:08 14 A. Yes.

10:21:08 15 Q. And you read the complaint?

10:21:12 16 A. The complaint?

10:21:15 17 Q. You read the complaint that he was making against you,

10:21:18 18 correct?

10:21:18 19 THE COURT: The lawsuit, did you read the lawsuit,

10:21:20 20 that's the question. Complaint is the term for the lawsuit.

10:21:23 21 THE WITNESS: I was made aware of, yes, regarding

10:21:28 22 information missing, yes.

10:21:29 23 MR. LOEVY: May I have a moment, your Honor?

10:21:31 24 THE COURT: Yes.

10:21:32 25 (Brief pause.) Bogdalek

10:21:53 1 BY MR. LOEVY:

10:21:53 2 Q. Prior to the disappearance of your notes, where had you
10:21:56 3 been keeping them? Where was the original version of your
10:21:59 4 notes?

10:21:59 5 A. I turned them in to my supervisor.

10:22:03 6 Q. That's the sergeant's office?

10:22:04 7 A. The sergeant's office along with the original report.

10:22:07 8 Q. Okay. Where in the sergeant's office were your original
10:22:10 9 notes, your Randy Langston notes?

10:22:11 10 A. I turned them in and he -- the policy was for me to turn
10:22:19 11 my supplementary report.

10:22:22 12 Q. The where question?

10:22:23 13 A. To the supervisor who would sign it and then he'd have
10:22:26 14 somebody put them into the investigative file, log them in
10:22:29 15 into the investigative file.

10:22:31 16 Q. That's in the file cabinet in the sergeant's office,
10:22:33 17 right?

10:22:33 18 A. Yes.

10:22:33 19 Q. Sergeant Murphy was one of the sergeants at the time,
10:22:37 20 correct?

10:22:37 21 A. Sergeant Murphy was a sergeant in the area at the time,
10:22:41 22 yes.

10:22:42 23 Q. All right. You did not destroy your notes, did you?

10:22:44 24 A. I destroyed my notes, yes.

10:22:45 25 Q. I thought you said you gave them to the sergeant?

10:22:48 1 A. No, no, no, I gave them after the originals. After a time
10:22:51 2 passed, I destroyed.

10:22:52 3 Q. You did not destroy the originals, right?

10:22:54 4 A. No, I turned them in.

10:22:55 5 Q. Is there -- are you certain that you turned them into the
10:23:00 6 sergeant, sir?

10:23:01 7 MR. KULWIN: Objection, argumentative, Judge.

10:23:02 8 THE COURT: Sustained. You have asked the question.

10:23:04 9 BY MR. LOEVY:

10:23:05 10 Q. That's the last time you saw your notes when you gave them
10:23:08 11 to the sergeant?

10:23:08 12 A. Yes.

10:23:08 13 Q. Who has access to the file in the file cabinet there?

10:23:12 14 A. Supervisors. Actually, any detective working could go
10:23:19 15 into the investigative file if he was looking for something.

10:23:21 16 Q. Could Detective O'Callaghan have access to the file with
10:23:24 17 the notes?

10:23:25 18 MR. MICHALIK: Objection.

10:23:25 19 MR. KULWIN: Objection, Judge, calls for speculation.

10:23:27 20 THE COURT: The objection is sustained.

10:23:29 21 BY MR. LOEVY:

10:23:29 22 Q. All right. Any detective who was working on the case
10:23:32 23 could do it, right?

10:23:33 24 A. Yes.

10:23:33 25 Q. All right. When did you discover that your notes were the

10:23:35 1 original conversation with Randy were missing?

10:23:38 2 A. When I went to trial, the first day of trial, at the

10:23:46 3 sixth, is that when the trial was?

10:23:47 4 Q. How did you discover on the first day of trial that your

10:23:50 5 Randy Langston notes were missing?

10:23:52 6 A. I was handed information, documents by the state's

10:23:54 7 attorney's office and my notes were not in there.

10:23:56 8 Q. All right. Who did you report that to?

10:23:57 9 A. No one.

10:23:58 10 Q. Did you bring that up with Sergeant Murphy?

10:24:00 11 A. No, I did not.

10:24:01 12 Q. Were you concerned that your original notes had gone

10:24:04 13 missing?

10:24:04 14 A. No, because I knew --

10:24:06 15 Q. The question was were you concerned?

10:24:07 16 A. No.

10:24:08 17 Q. You did understand Nate was being prosecuted for capital

10:24:12 18 murder, correct?

10:24:15 19 A. Yes.

10:24:20 20 Q. Did you have an understanding that Randy Langston's

10:24:21 21 testimony was pretty much the key to the case?

10:24:23 22 MR. MICHALIK: Objection, Judge.

10:24:24 23 THE COURT: It's a yes or no. Did he have that

10:24:25 24 understanding? You can answer.

10:24:29 25 THE WITNESS: Yes.

10:24:30 1 BY MR. LOEVY:

10:24:31 2 Q. All right. You did testify at the trial, right?

10:24:34 3 A. Yes.

10:24:34 4 Q. And you testified you couldn't recall if Randy told you it
10:24:38 5 was one shooter, did you not?

10:24:40 6 A. Yes.

10:24:43 7 Q. Actually, you did recall it was just one shooter?

10:24:45 8 A. Yes, a man.

10:24:46 9 Q. Why did you say if you couldn't recall it was one shooter
10:24:49 10 if you knew he told you one shooter?

10:24:51 11 A. That was my mistake.

10:24:52 12 Q. All right. When you read -- I want to fast forward again
10:24:59 13 to the CR file, the complaint that was filed against you.
10:25:03 14 When he filed the lawsuit and you read it?

10:25:05 15 A. Yes.

10:25:05 16 Q. All right. You understood that he was attaching
10:25:08 17 transcript pages that he did not get all of the notes and
10:25:11 18 files, correct?

10:25:11 19 A. I wasn't aware that he didn't get them all.

10:25:16 20 Q. You read the complaint, right?

10:25:17 21 A. Yes.

10:25:17 22 Q. And you had to respond to the lawsuit, right?

10:25:22 23 A. Yes.

10:25:23 24 Q. And what was -- you were one of the people who was accused
10:25:26 25 of not turning overall the exculpatory information, correct?

10:25:29 1 A. Yes.

10:25:30 2 Q. And what was your response?

10:25:33 3 A. My response, I made out an affidavit and I stated that I
10:25:42 4 did not intentionally or deliberately withhold any information
10:25:47 5 exculpatory or not related to the files.

10:25:51 6 Q. And showing you Plaintiff's Exhibit 2, page 120, this is
10:25:55 7 your statement, correct?

10:25:56 8 A. Yes.

10:26:06 9 Q. All right. Were you using words very carefully when you
10:26:09 10 said you did not intentionally and deliberately withhold
10:26:12 11 anything?

10:26:13 12 MR. MICHALIK: Objection, Judge.

10:26:14 13 THE COURT: Rephrase the question.

10:26:15 14 MR. LOEVY:

10:26:16 15 Q. All right. You knew when you wrote this response that the
10:26:18 16 accusation was he didn't get all the notes and he didn't get
10:26:21 17 all the files, right? You knew that?

10:26:23 18 A. Yes, I was responding to --

10:26:25 19 Q. You knew that? And when you knew that, you also knew that
10:26:30 20 it was false to say that things were withheld from him, that
10:26:34 21 things were not withheld, right?

10:26:36 22 THE COURT: Put the whole question.

10:26:37 23 MR. LOEVY: All right.

10:26:38 24 BY MR. LOEVY:

10:26:39 25 Q. You understood the allegation was that you didn't give him

10:26:42 1 everything, right?

10:26:42 2 A. That I didn't give him everything?

10:26:45 3 Q. Right?

10:26:45 4 A. That was the allegation.

10:26:47 5 Q. And you understood that you hadn't given him everything,
10:26:50 6 right?

10:26:50 7 A. There was my missing notes, yes.

10:26:59 8 Q. So you probably should have acknowledged that you didn't
10:27:03 9 give him everything, correct?

10:27:04 10 A. There was no policy or thinking as to what to do if there
10:27:10 11 is something missing.

10:27:10 12 Q. Isn't it true that the policy at the time permitted you to
10:27:16 13 withhold it and for that reason you thought there was nothing
10:27:19 14 wrong with this response?

10:27:22 15 MR. MICHALIK: Objection, Judge.

10:27:23 16 THE COURT: Sustained.

10:27:24 17 MR. LOEVY: All right. I have no further questions,
10:27:26 18 your Honor.

10:27:27 19 THE COURT: Mr. Michalik.

10:27:30 20 - - -

10:27:30 21 JOSEPH J. BOGDALEK, CROSS-EXAMINATION

10:27:30 22 BY MR. MICHALIK:

10:27:50 23 Q. Good morning, Mr. Bogdalek?

10:27:52 24 A. Good morning.

10:27:53 25 Q. Let start out with talking a little bit about your career

10:27:56 1 with the police department. You said that you are retired
10:27:59 2 from the Chicago Police Department?
10:28:00 3 A. Yes, I am.
10:28:01 4 Q. And when did that take place?
10:28:03 5 A. The year 2004.
10:28:04 6 Q. So that was over 12 years ago?
10:28:09 7 A. Yes.
10:28:10 8 Q. When did you start with the police department?
10:28:12 9 A. September of 1970.
10:28:15 10 Q. Did you start as a patrolman?
10:28:17 11 A. Yes, I did.
10:28:18 12 Q. And eventually you became a detective?
10:28:20 13 A. Yes.
10:28:20 14 Q. When did you become a detective?
10:28:23 15 A. 1981.
10:28:23 16 Q. Where were you assigned at that time?
10:28:25 17 A. The area one violent crimes unit located at 51st and Dan
10:28:33 18 Ryan expressway.
10:28:34 19 Q. Were you a detective at the area one violent crimes in
10:28:38 20 1984?
10:28:38 21 A. Yes.
10:28:39 22 Q. How long did you remain a detective?
10:28:42 23 A. Until 1988.
10:28:44 24 Q. What happened at that time?
10:28:45 25 A. I was promoted to sergeant in 1988.

10:28:48 1 Q. And did you retire as a sergeant?

10:28:50 2 A. Yes, I did.

10:28:50 3 Q. Okay. You were asked some questions about the policies

10:28:55 4 and practices of the police department regarding what is

10:28:58 5 turned over to prosecutors and criminal defense attorneys. Do

10:29:02 6 you recall those questions?

10:29:02 7 A. Yes.

10:29:02 8 Q. All right. Do you have knowledge of what the entire scope

10:29:08 9 of documents are that the police department is required to

10:29:12 10 turn over to prosecutors and criminal defense attorneys?

10:29:15 11 A. All notes, case reports.

10:29:19 12 Q. So it's not just limited to the permanent retention file,

10:29:22 13 correct?

10:29:23 14 A. No.

10:29:23 15 Q. It's other materials that are developed by detectives

10:29:26 16 during their investigation?

10:29:27 17 A. Yes.

10:29:28 18 Q. I am going to direct your attention to Saturday, April 28,

10:29:35 19 1984. Were you working that day?

10:29:37 20 A. Yes, I was.

10:29:37 21 Q. You told us you were working with your partner, Detective

10:29:41 22 Minogue?

10:29:41 23 A. Yes.

10:29:41 24 Q. And you were working the third watch?

10:29:43 25 A. Yes.

10:29:44 1 Q. And could you briefly explain what the watch system is to
10:29:47 2 the ladies and gentlemen of the jury?
10:29:48 3 A. The watch system is broken down into three different
10:29:51 4 watches. I worked the third watch. There's a roll call
10:29:56 5 starting a half hour before each watch, so that particular day
10:30:00 6 I started at 4:30. And at roll call, that is your shift
10:30:06 7 starts at 5:00 and goes to 1:00 in the morning followed by the
10:30:09 8 midnight shift, it goes from 1:00 until 9:00, and then the day
10:30:13 9 shift would go from 9:00 to 5:00. There is a half hour if you
10:30:17 10 come in early or before that.
10:30:18 11 Q. The midnight shift is also referred to as the first watch?
10:30:22 12 A. Yes.
10:30:22 13 Q. The day shift would be the second watch?
10:30:24 14 A. Yes.
10:30:24 15 Q. And then the night shift which you worked on was the third
10:30:29 16 watch?
10:30:29 17 A. Yes.
10:30:29 18 Q. At some point on April 28, 1984, you said you and your
10:30:32 19 partner were assigned to investigate the Smith/Hickman
10:30:37 20 murders, correct?
10:30:37 21 A. Yes.
10:30:38 22 Q. Describe how that assignment came to be?
10:30:40 23 A. Well, we walked into the office at 4:30 and the sergeant
10:30:43 24 briefed us on a double murder that occurred earlier in the day
10:30:47 25 and he wanted us to go out there to start canvassing the area,

10:30:53 1 start knocking on doors, looking for witnesses, anything to
10:30:58 2 consist in the investigation.
10:30:58 3 Q. What did you and Detective Minogue do at that time?
10:31:04 4 A. We proceeded to 706 East 39th and started canvassing the
10:31:09 5 area.
10:31:10 6 Q. Were you able to find any witnesses who had information
10:31:12 7 about the Smith/Hickman murder?
10:31:14 8 A. Yes, we did.
10:31:14 9 Q. How many?
10:31:15 10 A. Four.
10:31:15 11 Q. And as part of your -- this was all part of your
10:31:19 12 assignment on the evening of April 28th, 1984?
10:31:23 13 A. Yes.
10:31:23 14 Q. And you already mentioned those four witnesses that you
10:31:26 15 talked to, correct?
10:31:27 16 A. Yes.
10:31:27 17 Q. That was Minnie White, Randy Langston, Sandra Langston and
10:31:32 18 Gerald Langston?
10:31:32 19 A. Yes.
10:31:33 20 Q. If I could have Defendant's Exhibit 57, pages 13 to 14.
10:32:09 21 MR. MICHALIK: Judge, can you flip?
10:32:11 22 THE COURT: I thought I did.
10:32:19 23 BY MR. MICHALIK:
10:32:20 24 Q. All right. I think you were shown this before. This is a
10:32:21 25 copy of the supplementary report that you prepared regarding

10:32:24 1 the interviews of Minnie White and the Langstons?

10:32:27 2 A. Yes.

10:32:27 3 Q. It's dated April 30, 1984?

10:32:34 4 A. Yes.

10:32:35 5 Q. Can you tell the ladies and gentlemen of the jury how you
10:32:38 6 prepared this report?

10:32:40 7 A. The report was prepared off my notes I had taken after I
10:32:48 8 interviewed each one of them.

10:32:49 9 Q. And what was your practice with respect to converting your
10:32:53 10 notes into a GPR? I mean, into a supplementary report, excuse
10:32:58 11 me?

10:32:58 12 A. My standard procedure is take my notes, transcribe them
10:33:02 13 onto my supplementary report. Whatever was in my notes went
10:33:09 14 onto that report.

10:33:10 15 Q. Is there any information that is contained in one of your
10:33:14 16 notes that you do not put into a supplementary report?

10:33:18 17 A. I'm sorry. Could you rephrase the question?

10:33:22 18 Q. Sure. Is there any information that you would have in
10:33:24 19 your notes that you do not convert into the supplementary
10:33:27 20 report?

10:33:27 21 A. Anything that was in my notes was going into my report.

10:33:30 22 Q. All right. Now, I'm not going to go through this again.
10:33:34 23 You've already gone through this in detail as to what you
10:33:36 24 recorded here, but starting with Minnie White, I just wanted
10:33:40 25 to ask you where did that interview take place?

10:33:42 1 A. Apartment 105 at 706 East 39th Street.

10:33:45 2 Q. Okay. Did you interview her in the apartment?

10:33:47 3 A. Yes.

10:33:48 4 Q. And was anyone else present when you interviewed Minnie

10:33:52 5 White?

10:33:52 6 A. My partner.

10:33:53 7 Q. All right. How did that interview take place with you and

10:33:58 8 your partner?

10:33:58 9 A. Questions were asked, information was taken, I took notes,

10:34:06 10 and do you want me to read?

10:34:09 11 Q. No. Did both you and Detective Minogue talk to Minnie

10:34:14 12 White at the same time?

10:34:14 13 A. Not at the same time, no. I think it's just one handling

10:34:19 14 the interview.

10:34:19 15 Q. Okay. And you also talked to the Langston family members?

10:34:23 16 A. Yes.

10:34:24 17 Q. And that took place still on the evening of April 28,

10:34:27 18 1984?

10:34:27 19 A. Yes.

10:34:28 20 Q. Where did that -- where did those interviews take place?

10:34:32 21 A. Apartment 106, 706 East 39th Street.

10:34:35 22 Q. Was Gerald Morris present at any point when you and

10:34:40 23 Detective Minogue interviewed the Langstons in that apartment?

10:34:43 24 A. No.

10:34:44 25 Q. If he was, that would have been noted in your notes?

10:34:47 1 A. He would have been interviewed, tried to interview him,
10:34:53 2 attempt to interview him.

10:34:54 3 Q. Do you have any knowledge of any other detectives who
10:34:56 4 spoke to Gerald Morris on the evening of April 28, 1984?

10:35:00 5 A. No, I do not.

10:35:01 6 Q. All right. You also had gone through this report about
10:35:04 7 the information that was provided by the Langstons. Can you
10:35:07 8 briefly describe how that interview process took place.

10:35:12 9 A. In this particular process, we each interviewed, myself
10:35:16 10 and my partner, separately, we interviewed the three
10:35:19 11 Langstons. I interviewed one and he was interviewing another
10:35:22 12 one in different areas of the apartment.

10:35:25 13 Q. You personally interviewed each of the three Langstons?

10:35:29 14 A. Yes.

10:35:29 15 Q. When you interviewed any of those three Langstons, was
10:35:34 16 anyone else present other than you and that particular?

10:35:36 17 A. Just myself and the Langston that I was talking to.

10:35:39 18 Q. You were asked some questions about the information that
10:35:43 19 was provided to you by Sandra Langston. Do you recall that?

10:35:46 20 A. Yes.

10:35:47 21 Q. All right. When Ms. Langston was providing you
10:35:54 22 information, what did you do with that information?

10:35:56 23 A. Jotted it down, took the information that she was telling
10:36:02 24 me, yes.

10:36:02 25 Q. You wrote down exactly what she was telling you?

10:36:05 1 A. Yes.

10:36:05 2 Q. Do you know if Sandra was telling you everything that she
10:36:09 3 knew about her observations that day?

10:36:13 4 MR. LOEVY: Objection, foundation.

10:36:15 5 THE WITNESS: I do.

10:36:16 6 MR. MICHALIK: The question was do you know?

10:36:18 7 THE COURT: Overruled. You can answer.

10:36:21 8 THE WITNESS: Okay. I believe that everything she
10:36:24 9 was telling me she was being truthful with me.

10:36:26 10 BY MR. MICHALIK:

10:36:26 11 Q. All right. Would you have anyway to know if she was
10:36:30 12 leaving out some of the details of what happened that day?

10:36:32 13 MR. LOEVY: Objection.

10:36:33 14 THE COURT: Sustained.

10:36:34 15 BY MR. MICHALIK:

10:36:35 16 Q. Okay. You interviewed Randy Langston as well?

10:36:37 17 A. Yes.

10:36:37 18 Q. And, again, whatever information Randy provided you, you
10:36:42 19 wrote that down in your notes and converted it into the
10:36:46 20 supplementary report?

10:36:47 21 A. Yes.

10:36:47 22 Q. Again, do you have anyway to know whether Randy Langston
10:36:54 23 was telling you everything about what he had observed that
10:36:57 24 day?

10:36:58 25 MR. LOEVY: Same objection.

10:36:58 1 THE COURT: I permitted that question on the other
10:37:01 2 witness. I will permit it here. Go ahead. Do you know
10:37:03 3 whether he was telling you?

10:37:04 4 THE WITNESS: I believe what he was telling me, he
10:37:07 5 was being truthful.

10:37:08 6 BY MR. MICHALIK:

10:37:10 7 Q. And then you also interviewed James Langston that day as
10:37:12 8 well?

10:37:12 9 A. Yes.

10:37:13 10 Q. And again everything that James told you, you recorded in
10:37:16 11 your notes and converted it into the supplementary report?

10:37:19 12 A. Yes.

10:37:20 13 Q. All right. In looking at the supplementary report, go to
10:37:27 14 the top, there's some additional information that is provided
10:37:29 15 for each of the witnesses that you interviewed on April 28,
10:37:32 16 1984, correct?

10:37:33 17 A. Yes, on the second page or the first page?

10:37:38 18 Q. First page and the second page. There's contact
10:37:41 19 information?

10:37:41 20 A. Yes.

10:37:41 21 Q. Of all of those witnesses, true?

10:37:43 22 A. Yes.

10:37:43 23 Q. So that I think you told us that James had provided
10:37:50 24 information about what he observed that morning, correct?

10:37:53 25 A. Yes.

10:37:53 1 Q. So that James was an eyewitness to the events?

10:37:57 2 A. Yes.

10:37:57 3 Q. And you included his contact information in your

10:38:00 4 supplementary report?

10:38:01 5 A. Yes.

10:38:01 6 Q. You've got his address and his phone number?

10:38:05 7 A. Yes.

10:38:05 8 Q. Why do you include that information in a supplementary

10:38:07 9 report?

10:38:07 10 A. Well, James is an eyewitness and if any other detectives

10:38:13 11 or investigators were looking into this matter and they needed

10:38:17 12 to talk to him for more information, it had his contact

10:38:22 13 information to make it easier for them to locate and find and

10:38:24 14 talk to him.

10:38:25 15 Q. If we could see Plaintiff's Exhibit 1, page 104.

10:38:33 16 All right. You were asked some questions about this

10:38:45 17 to/from memo. Do you recall that?

10:38:46 18 A. Yes. Yes.

10:38:50 19 Q. Who prepared that memo?

10:38:51 20 A. My partner, James Minogue, Detective Minogue.

10:38:56 21 Q. It has some information that was attributed to

10:39:00 22 Mr. Langston and Mr. Loevy asked you some questions about

10:39:03 23 that. Do you recall?

10:39:03 24 A. Yes.

10:39:03 25 Q. According to James Langston, he says that he saw the get

10:39:06 1 away car, correct?

10:39:07 2 A. Yes.

10:39:08 3 Q. And what did James Langston tell you about that get away
10:39:13 4 car and the direction that it was traveling?

10:39:14 5 A. Did he tell me? He didn't.

10:39:18 6 Q. Sorry. Thank you.

10:39:19 7 What information is reflected that was provided by
10:39:22 8 James Langston concerning the direction of the get away car?

10:39:25 9 A. The offenders were fleeing in a blue Cadillac, the car
10:39:31 10 went south on Langley, then west on 39th Street.

10:39:34 11 Q. All right. So according to this information that was
10:39:36 12 provided by James Langston, he said that the car was going
10:39:41 13 south on Langley, which would be going toward the scene where
10:39:45 14 the shooting occurred, correct?

10:39:46 15 A. Yes.

10:39:47 16 Q. And that it made a right turn to go west down 39th Street?

10:39:52 17 A. Yes.

10:39:52 18 Q. All right. According to the memo, James Langston also
10:39:59 19 suggested that the person that he saw in the passenger seat of
10:40:03 20 the get away car was the brother of Ricky Baldwin?

10:40:08 21 A. Yes.

10:40:08 22 Q. You were asked some questions about that. I just want to
10:40:13 23 follow up on what did you do to investigate that information?

10:40:17 24 A. Myself and my partner after the interviews were complete,
10:40:22 25 we went into our area, area 51st and -- I call it area, our

10:40:29 1 police station, 51st and Wentworth, and we went through our
10:40:33 2 alpha files which are arrest files that we keep at the time,
10:40:38 3 arrest records.
10:40:38 4 Q. Why would you check the alpha file if you were looking for
10:40:45 5 Baldwins?
10:40:45 6 A. We were looking for any Baldwins, last name of Baldwins
10:40:48 7 that could maybe give us some more information, maybe get some
10:40:51 8 photos or something like that on where they might reside.
10:40:53 9 Q. Were you able to find any information regarding any
10:40:58 10 Baldwins in the alpha file?
10:40:59 11 A. Yes, we did.
10:41:00 12 Q. What did you find?
10:41:01 13 A. We found two photos, I'm sorry, we had to go down to 1121
10:41:07 14 south state to obtain the photos. There were two photos
10:41:11 15 found. One on a Sean Baldwin and one on a Ricky, not Ricky,
10:41:16 16 Sean and Paul Baldwin.
10:41:17 17 Q. And I think you told Mr. Loevy that at that time, there
10:41:22 18 were no other photos available of any other Baldwin brothers?
10:41:24 19 A. No, there were none on our files, no.
10:41:27 20 Q. What, if anything, did you do with those two photos that
10:41:30 21 Mr. Loevy showed you?
10:41:32 22 A. We obtained copies of the photos from our ident section.
10:41:37 23 Then we took them to 106 I'm sorry, apartment 106 at 706 East
10:41:44 24 39th Street, the apartment of James Langston and looking for
10:41:47 25 him to show him the photos to see if it would help us

10:41:49 1 identify, if either one of these two Baldwins were the person
10:41:52 2 he saw in the car.
10:41:53 3 Q. When did all of this take place?
10:41:56 4 A. Later that night.
10:41:57 5 Q. Still?
10:41:57 6 A. The same day.
10:41:58 7 Q. April 28, 1984?
10:42:00 8 A. April 28, yes.
10:42:01 9 Q. All right. Were you able to find Mr. Langston that
10:42:05 10 evening?
10:42:06 11 A. Yes, we located him in the apartment at 106 East 39th
10:42:09 12 Street.
10:42:09 13 Q. Did you show the photos to James?
10:42:11 14 A. Yes, I did.
10:42:12 15 Q. What did he say?
10:42:12 16 A. He identified the one photo of Sean Baldwin, he says,
10:42:17 17 yeah, that's a Baldwin, but he's not the one that was in the
10:42:20 18 car. He was unable to identify the other person, the other
10:42:23 19 Baldwin, but he said that person was not in the car either.
10:42:27 20 Q. So just to wrap up, according to James Langston, either
10:42:31 21 Paul Baldwin nor Sean Baldwin was the person he was saying he
10:42:36 22 saw in the get away car?
10:42:37 23 A. Yes.
10:42:38 24 Q. All right. You were asked some questions about your
10:42:41 25 investigation of the Edwards brothers. Do you recall that?

10:42:44 1 A. Yes.

10:42:45 2 Q. All right. This was the note that Mr. Loevy showed you
10:43:15 3 before?

10:43:15 4 A. Yes.

10:43:15 5 Q. All right. And you said that this was an anonymous tip,
10:43:20 6 correct?

10:43:20 7 A. Yes.

10:43:20 8 Q. Was it common for the Chicago Police Department back in
10:43:25 9 the 1984 time frame to get anonymous tips?

10:43:28 10 A. Yes, it was.

10:43:29 11 Q. What would detective do with anonymous tips?

10:43:31 12 A. We'd check them out, whatever information, names, anything
10:43:36 13 that could help us, check out the tip, we'd investigate it.

10:43:40 14 Q. This particular tip is about Lawrence and Marshall
10:43:47 15 Edwards, Lawrence Edwards and Marshall Edwards, correct?

10:43:50 16 A. Yes. Yes.

10:43:54 17 Q. What did you and Detective Minogue do to investigate this
10:43:58 18 anonymous tip?

10:43:59 19 A. We checked our files, alpha files to see if there were any
10:44:06 20 previous -- they had been previously arrested, anything that
10:44:10 21 can help us, photos, addresses, where they could they be
10:44:15 22 located, physical descriptions, and we were able to in our
10:44:17 23 files find some information.

10:44:18 24 Q. And I think you told Mr. Loevy that you were able to track
10:44:21 25 down the Edwards brothers at some point and talk to them,

10:44:24 1 correct?

10:44:25 2 A. Yes.

10:44:25 3 Q. And they both provided you with alibis?

10:44:27 4 A. Yes.

10:44:27 5 Q. When you talked to the Edwards brothers, did you talk to

10:44:33 6 them at the same time or separately?

10:44:35 7 A. No, we had them separated when we talked to them.

10:44:38 8 Q. Were they cooperative with you when you talked to them?

10:44:41 9 A. Yes.

10:44:41 10 Q. And they provided you their alibis?

10:44:44 11 A. Yes.

10:44:44 12 Q. As you told us before, those alibis were checked out by

10:44:47 13 you and Detective Minogue?

10:44:50 14 A. Yes.

10:44:50 15 Q. If I could see Plaintiff's Exhibit 1, page 106. I think

10:45:09 16 you referred putting that information in a general progress

10:45:12 17 report on checking out the alibi of the Edwards brothers?

10:45:15 18 A. Yes.

10:45:16 19 Q. Looking at this, is this the general progress report that

10:45:19 20 you were referring to regarding the Edwards brothers?

10:45:23 21 A. At the very bottom, yeah.

10:45:25 22 Q. Okay. So you did reflect this in a general progress

10:45:28 23 report?

10:45:29 24 A. Yeah, the paragraph above.

10:45:32 25 Q. Is that the paragraph that you're referring to?

10:45:36 1 A. Yes.

10:45:37 2 Q. It says that the other anonymous call that alleged that
10:45:40 3 Lawrence and Marshall Edwards were the killers was checked
10:45:43 4 out.

10:45:43 5 A. Yes.

10:45:43 6 Q. You were also asked a little bit about investigator Edward
10:45:57 7 Stewart. Do you recall that question and that testimony?

10:45:59 8 A. Yes.

10:45:59 9 Q. Let's back up a little bit. If I could have Exhibit 1,
10:46:03 10 page 145. This tip regarding Edwards Stewart was another
10:46:16 11 anonymous tip?

10:46:16 12 A. Yes.

10:46:17 13 Q. Is this the anonymous tip that you were referring to
10:46:22 14 that's reflected on Exhibit 1, page 145?

10:46:25 15 A. Yes.

10:46:26 16 THE COURT: He said yes.

10:46:28 17 BY MR. MICHALIK:

10:46:28 18 Q. Okay. Where did this tip come -- can you explain how this
10:46:33 19 anonymous tip came to the attention of the police department?

10:46:34 20 A. David minute fold called into our office, he is a janitor
10:46:43 21 that works at C H building at 2960, m-i-n-n-i-f-i-e-l-d, he's
10:46:57 22 the janitor in a CHA building at 2960 south State Street. He
10:47:06 23 called our office stating that he had received some
10:47:08 24 information from an anonymous caller that he described as
10:47:12 25 being a mail black, a youthful male black who told him that he

10:47:17 1 saw a phone number on television to call if they had any
10:47:23 2 information regarding this double murder investigation. So he
10:47:27 3 called the number and it turns out the number belonged to
10:47:32 4 Mr. Winfield.
10:47:33 5 Q. Just so we're clear about the hes and all that.
10:47:37 6 Mr. Minute field contacted the police department?
10:47:39 7 A. Yes.
10:47:39 8 Q. About an anonymous tip that he had received?
10:47:41 9 A. Yes.
10:47:41 10 Q. And the anonymous tipster called a telephone number that
10:47:48 11 the tipster saw on the television and it turned out to be
10:47:52 12 Mr. Mini field's number?
10:47:53 13 A. Yes.
10:47:54 14 Q. What was it that Mr. Mini field relayed to you regarding
10:47:59 15 this anonymous tip?
10:47:59 16 A. This came in late at night, and we did not get involved in
10:48:03 17 this until the very next day, so we went out and we spoke to
10:48:07 18 him personally.
10:48:08 19 Q. Let me stop you there. What dates are you talking about
10:48:10 20 here?
10:48:11 21 A. I don't recall the exact date, but --
10:48:14 22 Q. Was it April 28th, the first day of your investigation?
10:48:17 23 A. It was the 29th the call came in and it would have been
10:48:20 24 the 30th.
10:48:20 25 Q. Thank you?

10:48:21 1 A. According to the note here.

10:48:22 2 Q. Please continue with what Mr. Mini field told you that was
10:48:27 3 the information provided to him by the anonymous tipster?

10:48:29 4 A. He started off basically with the information I told you
10:48:33 5 about, how he got the tip and in the tip itself it said that
10:48:36 6 the guy driving the car was Edward Stewart and also in the car
10:48:41 7 was a Darryl Baldwin and somebody by the name of Chico.

10:48:44 8 Q. So this anonymous tipster told Mr. Mini field that there
10:48:48 9 were three suspects in this vehicle, correct?

10:48:50 10 A. Yes.

10:48:50 11 Q. All right. What else did you learn from Mr. Mini field
10:48:55 12 about the tip?

10:48:56 13 A. That he went on to say that the information that he
10:49:00 14 received, that the subject Edward Stewart was living with his
10:49:06 15 girlfriend Olivia Wallace at 4716 south Cottage Grove.

10:49:11 16 Q. All right. What, if anything, did you do with this
10:49:14 17 information that was provided to you by Mr. Mini field from
10:49:17 18 this anonymous tip?

10:49:18 19 A. With all the information we had on Edward Stewart, Darryl
10:49:23 20 Baldwin, and Olivia Wallace, we went back to our alpha files
10:49:29 21 to see if we could find anything, any identification about
10:49:32 22 them, where they might be living, had they ever been arrested
10:49:37 23 before, had photos of them for purposes of identification to
10:49:42 24 know if they were the people we were talking to and we were
10:49:45 25 able to find some information on Edward Stewart, Olivia

10:49:49 1 Wallace, there was nothing on Darryl Baldwin, and there was a
10:49:53 2 third person by the name of Chico.
10:49:57 3 Q. What did you do next in terms of investigating it
10:50:01 4 anonymous tip?
10:50:01 5 A. We went down, we got photos of them, of the people, the
10:50:04 6 photos that were available on the two and then we went to
10:50:07 7 Olivia Wallace's apartment.
10:50:09 8 Q. Were you able to find Ms. Wallace?
10:50:11 9 A. Yes.
10:50:11 10 Q. Was she willing to talk to you?
10:50:13 11 A. Yes.
10:50:13 12 Q. And what, if anything, did she tell you?
10:50:16 13 A. Well, we asked her if she knew Edward Stewart and she says
10:50:22 14 yes.
10:50:22 15 Q. What did she say?
10:50:24 16 Did she provide you with any information in addition
10:50:27 17 to that?
10:50:27 18 A. Yes, she told us Edward Stewart was living on the west
10:50:30 19 side of Chicago, provided us with an address of 1255 north
10:50:34 20 central, she said that -- we asked her if she knew Darryl
10:50:41 21 Baldwin and Chico. She said she knew who Darryl Baldwin was
10:50:47 22 and he lived at 3833 South Langley. Chico, she was not that
10:50:53 23 familiar with. She couldn't provide -- she gave an address of
10:50:58 24 area 40th and Drexel.
10:51:00 25 Q. Did she provide?

10:51:01 1 A. She said they all hung together, all three of them hung
10:51:06 2 together, but she had not seen Edward since the first of the
10:51:08 3 year, and she -- that's about it on that.
10:51:17 4 Q. She told you that she had not seen Edward Stewart since
10:51:21 5 January 1984 or thereabouts?
10:51:22 6 A. That's correct, yes.
10:51:23 7 Q. Did she provide you any information regarding the type of
10:51:26 8 car that Mr. Stewart had?
10:51:27 9 A. Yeah, we asked her what kind of car he had, and she said
10:51:30 10 he had a 1973 Camaro.
10:51:33 11 Q. Not a blue Cadillac?
10:51:35 12 A. No.
10:51:36 13 Q. All right. What did you do next in investigating this
10:51:40 14 anonymous tip?
10:51:40 15 A. After talking to her, we went out to 1255 north central on
10:51:47 16 the west side of Chicago looking for Edward Stewart.
10:51:50 17 Q. Were you able to find Mr. Stewart?
10:51:52 18 A. Yes, we did.
10:51:52 19 Q. And where did you find him?
10:51:54 20 A. We found him at 1255 north central in an apartment.
10:51:57 21 Q. That was the address that Olivia Wallace provided to you?
10:52:01 22 A. Yes.
10:52:01 23 Q. Was Mr. Stewart willing to talk to you?
10:52:04 24 A. Yes.
10:52:04 25 Q. Was he uncooperative in any way?

10:52:06 1 A. No, he wasn't.

10:52:07 2 Q. What did Edward Stewart tell you?

10:52:09 3 A. Well, we asked him what he was doing on the date and time
10:52:12 4 in question about the time the murder occurred and he said he
10:52:18 5 was -- he worked in downtown Chicago at the McDonald's at
10:52:24 6 Chicago and water tower, I believe that's Chicago and state
10:52:27 7 and he said he left for work from his apartment, his apartment
10:52:31 8 now was 700 block of north central, that he got on the el,
10:52:37 9 took the el down to where he worked, started working at 10:30,
10:52:42 10 and.

10:52:43 11 Q. And you told Mr. Loevy before that you attempted to verify
10:52:47 12 Mr. Stewart's alibi by calling that McDonald's's right?

10:52:50 13 A. We did contact that McDonald's and we got no information,
10:52:54 14 it was closed. They said they were closed and there wasn't a
10:52:57 15 24/7 operation.

10:52:59 16 Q. Did Mr. Stewart tell you anything else that was helpful to
10:53:03 17 your investigation of this anonymous tip?

10:53:06 18 A. Yes, we asked him what kind of car he drove.

10:53:09 19 Q. What did he tell you?

10:53:10 20 A. He told us that he drove a white 1973 Camaro.

10:53:14 21 Q. And that matched the information that was provided to you
10:53:16 22 by Ms. Wallace again, correct?

10:53:18 23 A. Yes.

10:53:18 24 Q. So in addition to an alibi, there was additional
10:53:22 25 information suggesting that this anonymous tip was incorrect

10:53:28 1 about Mr. Stewart's vehicle?

10:53:29 2 A. Yes.

10:53:30 3 Q. Did Mr. Stewart say anything about Darryl Baldwin?

10:53:37 4 A. He had not seen Darryl Baldwin in about seven or eight
10:53:41 5 months. And he hadn't seen Chico in a while either.

10:53:46 6 Q. So if I understand it correctly, Mr. Stewart told you he
10:53:50 7 had not seen Darryl Baldwin in seven or eight months?

10:53:54 8 A. Yes.

10:53:54 9 Q. And Olivia Wallace said she hadn't seen him since the
10:53:59 10 beginning of the year?

10:54:00 11 A. Yes.

10:54:00 12 Q. Did you do anything to attempt to find any information out
10:54:07 13 about Darryl Baldwin independently of what these witnesses
10:54:10 14 were telling you?

10:54:10 15 A. We went to the address that Olivia supplied at 3833, it's
10:54:19 16 a highrise CHA building, 16 floors, 16 stories, and we were
10:54:28 17 able to make no contact with him.

10:54:32 18 Q. Now, you told us before that sometimes when you were
10:54:34 19 looking for a witness, you would go to the alpha file. Do you
10:54:37 20 recall that testimony?

10:54:37 21 A. Yes.

10:54:38 22 Q. Did you do that for Darryl Baldwin?

10:54:40 23 A. Yes, we did.

10:54:41 24 Q. What did you find?

10:54:42 25 A. We did not find any information on him.

10:54:44 1 Q. So what did that mean regarding Mr. Baldwin if there was
10:54:51 2 no information in the alpha file?

10:54:53 3 A. That we weren't able to find him, locate him.

10:54:58 4 Q. To there was no arrest record for Darryl Baldwin in the
10:55:02 5 alpha file?

10:55:02 6 A. No.

10:55:02 7 Q. And he hadn't been seen by these two witnesses?

10:55:04 8 A. Yeah, seven or eight. There's nothing to corroborate the
10:55:09 9 tip on Darryl Baldwin being in the car.

10:55:12 10 Q. Did Mr. Stewart provide you any information about Chico?

10:55:19 11 A. He hadn't seen Chico in a while and Chico lived in the
10:55:26 12 area, 40th and Drexel.

10:55:28 13 Q. Did he know Chico's real name?

10:55:33 14 A. No, he did not.

10:55:34 15 Q. Did Mr. Stewart provide you with any sort of information
10:55:38 16 about the type of car that either Darryl Baldwin or Chico
10:55:43 17 owned?

10:55:43 18 A. As far as he knew, neither one of them had a Cadillac.

10:55:46 19 Q. If I could just briefly see Plaintiff's Exhibit 1, page
10:55:51 20 106.

10:55:53 21 I think we looked at this before, Mr. Bogdalek. Is
10:56:06 22 this a general progress report that reflects all of the
10:56:07 23 information that you just explained to the ladies and
10:56:11 24 gentlemen of the jury regarding the investigation of Edward
10:56:14 25 Stewart and the anonymous tip that was provided through

10:56:17 1 Mr. Mini field?

10:56:19 2 A. Yes.

10:56:20 3 Q. If I could have Exhibit 2, page 120.

10:57:14 4 Mr. Bogdalek, you were asked some questions about
10:57:23 5 this report that you prepared in response to the lawsuit that
10:57:28 6 was filed by Mr. Fields. Do you recall those questions?

10:57:31 7 A. Yes.

10:57:31 8 Q. According to this, it says that the under signed, and that
10:57:37 9 would be you, correct?

10:57:38 10 A. That is correct, yes.

10:57:39 11 Q. Did not intentionally and deliberately suppress any
10:57:42 12 written notes which contained any information or which
10:57:44 13 contained exculpatory information/evidence relative to this or
10:57:50 14 any investigation. That's what you said?

10:57:52 15 A. Yes.

10:57:53 16 Q. Did you intentionally or deliberately suppress any written
10:57:57 17 notes which contained any information which contained
10:57:59 18 exculpatory information or evidence regarding your work on the
10:58:02 19 Smith/Hickman case?

10:58:03 20 A. No.

10:58:04 21 Q. Were you aware of anyone else who suppressed or withheld
10:58:11 22 any materials regarding the Smith/Hickman case?

10:58:15 23 A. No.

10:58:16 24 Q. So that affidavit was true back then and it's true today?

10:58:19 25 A. Yes.

10:58:19 1 Q. Now, during your investigation of the Smith/Hickman
10:58:29 2 homicides in April and May of 1984, did the name of Anthony
10:58:33 3 Sumner ever come up?
10:58:34 4 A. No.
10:58:35 5 Q. Did any witness or anyone else ever suggest to you at the
10:58:39 6 time that Anthony Sumner was involved in the Smith/Hickman
10:58:42 7 murders?
10:58:43 8 A. No.
10:58:43 9 Q. During your investigation, did anyone suggest that someone
10:58:49 10 with the nickname sundown was involved in the Smith/Hickman
10:58:52 11 murders?
10:58:52 12 A. No.
10:58:53 13 Q. During your investigation, did the name Earl Hawkins ever
10:58:57 14 come up?
10:58:58 15 A. No.
10:58:59 16 Q. Did anyone ever suggest to you that Earl Hawkins was
10:59:01 17 involved in these murders?
10:59:02 18 A. No.
10:59:03 19 Q. Did you know Nathson Fields prior to your investigation
10:59:09 20 work in 1984?
10:59:10 21 A. No.
10:59:11 22 Q. Did you ever hear of the name Nathson Fields prior to that
10:59:17 23 time?
10:59:18 24 A. No.
10:59:18 25 Q. Did Mr. Fields name ever come up during your 1984

10:59:22 1 investigation of the Smith/Hickman murders?

10:59:23 2 A. No.

10:59:23 3 Q. Did you ever prepare a note or a report suggesting that

10:59:26 4 Mr. Fields was involved in the Smith/Hickman murders?

10:59:29 5 A. No.

10:59:30 6 Q. Did you ever prepare a note or report that any witness

10:59:34 7 told you that Mr. Fields was not involved in the Smith/Hickman

10:59:37 8 murders?

10:59:38 9 A. No.

10:59:41 10 MR. MICHALIK: If I can have a moment, your Honor.

10:59:45 11 THE COURT: Sure.

10:59:47 12 MR. MICHALIK: Thank you. That's all I have.

10:59:48 13 THE COURT: Mr. Kulwin.

10:59:50 14 MR. KULWIN: Yes, your Honor.

10:59:51 15 - - -

10:59:51 16 ^ WITNAME, CROSS-EXAMINATION

10:59:51 17 BY MR. KULWIN:

11:00:00 18 Q. Good morning. Detective, I want to ask you some questions

11:00:05 19 about your interview of Sandra Langston if I could. I believe

11:00:12 20 that plaintiff's 86 and defendants' 57 are the same.

11:00:16 21 So I want to put up first?

11:00:33 22 MR. KULWIN: Could I have the ELMO, Judge?

11:00:35 23 THE COURT: Sure.

11:00:35 24 MR. KULWIN: Thanks.

11:00:37 25 BY MR. KULWIN:

11:00:46 1 Q. Now, this is the to/from memo that you wrote about your
11:00:50 2 interview of Sandra Langston. Do you see that?
11:00:52 3 A. Yes, my partner wrote that, yes.
11:00:56 4 Q. Your partner, and that was Detective Minogue?
11:00:58 5 A. Detective Minogue, yes.
11:01:01 6 Q. Now, if you notice, what does it say that Sandra Langston
11:01:07 7 saw while she was standing in the window? Start from the top.
11:01:11 8 Sandra Langston said she was talking to Fuddy just before the
11:01:15 9 shooting. She was speaking to from her second floor bedroom
11:01:22 10 window. He walked into the breezeway. She saw two male
11:01:25 11 blacks, description, red ski hat, white jacket (sic) should be
11:01:29 12 blue ^ , light complexion. She then heard shots, right? Was
11:01:32 13 that what Ms. Langston told your partner according to this?
11:01:37 14 A. Yes.
11:01:37 15 Q. Now, if we could look at your report that was produced to
11:01:43 16 the defendants?
11:02:05 17 MR. KULWIN: Can I switch to the computer, Judge?
11:02:09 18 THE COURT: Yes.
11:02:09 19 BY MR. KULWIN:
11:02:10 20 Q. Can you blow up Sandra Langston?
11:02:11 21 BY MR. KULWIN:
11:02:14 22 Q. Okay. Now, this is the report that you wrote after your
11:02:19 23 interview -- recording -- transcribing or summarizing your
11:02:23 24 interview with Sandra Langston when you interviewed her,
11:02:25 25 correct?

11:02:25 1 A. Yes.

11:02:26 2 Q. Okay. It says here Sandra was interviewed and related the
11:02:31 3 following, just prior to the victim being shot, she was
11:02:34 4 talking to the victim, Jerome Fuddy Smith from her second
11:02:38 5 floor bedroom window about Paul hailyly getting out of jail.
11:02:42 6 After the conversation ended, Smith said he was going to the
11:02:47 7 front of the building and walked away. A short time later she
11:02:50 8 heard three shots coming from the front of the building.

11:02:52 9 If you flip up here, she goes, she first added that
11:02:55 10 she had observed the two male blacks, she had observed two
11:02:58 11 male blacks following victim Smith when he walked away from
11:03:03 12 her bedroom window, that's what it says?

11:03:05 13 A. Yes.

11:03:05 14 Q. Am I reading it right that what she's telling you is that
11:03:08 15 she is talking to Fuddy, he walks into the breezeway, and then
11:03:11 16 she sees two male blacks following him, is that what this
11:03:15 17 says?

11:03:15 18 MR. LOEVY: Objection, asked and answered.

11:03:16 19 THE COURT: Overruled. You can answer.

11:03:17 20 THE WITNESS: Yes.

11:03:20 21 BY MR. KULWIN:

11:03:21 22 Q. Okay. Now, in addition going back to the -- in this
11:03:26 23 document here, she says that the man was wearing a red ski
11:03:45 24 mask hat?

11:03:45 25 A. Yes.

11:03:46 1 Q. Hat.

11:03:47 2 Once again, she says red ski hat, right?

11:03:55 3 A. Yes.

11:03:56 4 Q. Okay. There's nothing about a mask being pulled over the
11:04:04 5 men's face, right?

11:04:05 6 A. No.

11:04:06 7 Q. If I could turn your attention now to Gerald Morris'
11:04:09 8 testimony from the trial, page 232, I apologize. It might be
11:04:31 9 -- 232 and 233, and this is Gerald Morris' testimony in the
11:04:34 10 trial. It says, and did you see anything unusual as you sat
11:04:39 11 in the window after Fuddy left? And then he says, yes. What
11:04:46 12 did you see? I seen two males walk right behind him. Did you
11:04:51 13 see where they were coming from? No, I didn't. Where is the
11:04:56 14 first place you saw them? Entering the parking lot.

11:04:59 15 Okay. So Mr. Morris' testimony is completely
11:05:05 16 consistent with this, correct?

11:05:09 17 MR. LOEVY: Objection.

11:05:10 18 THE COURT: Sustained.

11:05:10 19 BY MR. KULWIN:

11:05:15 20 Q. Now, this permanent retention file, I think counsel,
11:05:20 21 Mr. Loevy commented that this permanent retention file, that's
11:05:25 22 turned over?

11:05:26 23 MR. LOEVY: Objection, same subject covered already.

11:05:29 24 THE COURT: I haven't heard the question yet. Go
11:05:32 25 ahead and ask the question.

11:05:32 1 BY MR. KULWIN:

11:05:33 2 Q. Is it your understanding, detective, that the permanent
11:05:36 3 retention file with your police reports, including this
11:05:38 4 interview with Ms. Langston would be turned over to the
11:05:40 5 defense?

11:05:40 6 MR. LOEVY: Objection, your Honor, that subject was
11:05:43 7 covered.

11:05:43 8 THE COURT: You have to ask the question in a
11:05:44 9 different way.

11:05:45 10 MR. KULWIN: Okay. Sure. Bad question?

11:05:47 11 THE COURT: Yes.

11:05:48 12 BY MR. KULWIN:

11:05:49 13 Q. Detective, you're familiar with the -- are you familiar
11:05:54 14 with the term permanent retention file?

11:05:57 15 A. Yes.

11:05:57 16 Q. Okay. Are you familiar with whether those reports that
11:06:02 17 are in the are turned over in the criminal justice system as
11:06:09 18 Mr. Loevy would say to the defendant to your knowledge?

11:06:10 19 A. I am not -- I am not sure.

11:06:12 20 Q. One way or the other?

11:06:15 21 A. No.

11:06:15 22 Q. Let me ask you this question. Are you aware that the
11:06:21 23 defendants never called Sandra Langston to testify at Mr.
11:06:26 24 Fields' trial? Are you aware of it one way or the other?

11:06:29 25 A. No.

11:06:30 1 Q. Now, you were asked some questions about James Langston.

11:06:51 2 Are you aware that James Langston was called by Mr. Fields as
11:06:55 3 a witness in his death penalty hearing? Were you aware of
11:06:59 4 that?

11:07:00 5 A. No.

11:07:00 6 Q. Were you aware that at the time of his trial, Mr. Fields'
11:07:07 7 counsel was fully aware of James Langston's testimony, are you
11:07:10 8 aware one way or the other? You don't know?

11:07:14 9 A. I don't know.

11:07:14 10 Q. Now, you were asked some questions about what Randy
11:07:40 11 Langston said he was doing that day. You also spoke with
11:07:44 12 Carlos Willis; is that correct?

11:07:45 13 A. I did not speak with Carlos Willis.

11:07:48 14 Q. Okay. That would be Detective Hood and Evans?

11:07:51 15 A. I would assume.

11:07:53 16 Q. You don't know.

11:07:54 17 You mentioned that there were a number of detectives
11:08:02 18 working on this investigation, right?

11:08:05 19 A. Yes.

11:08:06 20 Q. Was a detective J. /SRAPLer shot one of them?

11:08:11 21 A. Yes.

11:08:11 22 Q. Okay. And would he have interviewed people that you
11:08:15 23 didn't interview perhaps?

11:08:19 24 MR. LOEVY: Objection to foundation, your Honor.

11:08:20 25 THE COURT: Sustained.

11:08:20 1 BY MR. KULWIN:

11:08:22 2 Q. If you know?

11:08:22 3 THE COURT: The objection is sustained.

11:08:23 4 BY MR. KULWIN:

11:08:25 5 Q. Let me show you the investigative file.

11:08:29 6 MR. KULWIN: If I may approach, Judge.

11:08:31 7 THE COURT: Sure.

11:08:32 8 BY MR. KULWIN:

11:08:33 9 Q. This is page 7604. Have you ever seen this? This is the

11:08:46 10 investigative file, detective?

11:08:48 11 MR. LOEVY: Your Honor, could we have an exhibit?

11:08:50 12 I'm sorry. That's not an exhibit.

11:08:54 13 THE COURT: Plaintiff's 1?

11:08:55 14 MR. KULWIN: I believe this is plaintiff's 194.

11:08:58 15 MR. LOEVY: The page.

11:08:58 16 THE COURT: What page are you showing him?

11:09:00 17 MR. KULWIN: Showing him the one I just told you,

11:09:04 18 7604.

11:09:06 19 MR. SWAMINATHAN: 194-what?

11:09:08 20 MR. KULWIN: I don't have a --

11:09:10 21 THE COURT: Just show it to Mr. Loevy so he can see

11:09:12 22 it. All right. Go ahead.

11:09:17 23 BY MR. KULWIN:

11:09:22 24 Q. Do you see the signature at the bottom there, right there?

11:09:26 25 A. Murphy.

11:09:30 1 Q. Right there?

11:09:30 2 A. Vanner shot.

11:09:31 3 A. Yes.

11:09:32 4 Q. Is that detective /SRAPBDer shot's signature, to the best
11:09:35 5 of your knowledge?

11:09:35 6 A. That's his name.

11:09:37 7 Q. All right. Does it indicate whether he interviewed
11:09:39 8 someone by the name of Eric Benson in the top?

11:09:45 9 MR. LOEVY: Relevance, your Honor.

11:09:46 10 THE COURT: I can't hear you.

11:09:47 11 MR. LOEVY: Relevance.

11:09:48 12 THE COURT: This is going to be covered in some other
11:09:54 13 way. I am going to sustain the objection. It's not that it's
11:09:56 14 irrelevant. It's just going to be covered in some other way.
11:10:00 15 The objection is sustained. Or it needs to be covered in some
11:10:04 16 other way I should say.

11:10:07 17 MR. KULWIN: I can cover it with someone else.

11:10:10 18 BY MR. KULWIN:

11:10:10 19 Q. You were asked about whether or not you put important
11:10:12 20 details down in your reports, right?

11:10:15 21 A. Yes.

11:10:15 22 Q. So if someone was wearing a mask over their face and the
11:10:20 23 witness told you that they were wearing a mask over the face,
11:10:24 24 that's an important detail that you would write down in the
11:10:27 25 report if someone said a man was wearing a mask over his face?

11:10:31 1 A. Yes.

11:10:31 2 Q. And with respect to James Langston?

11:10:46 3 MR. LOEVY: Objection, your Honor, James Langston was
11:10:48 4 covered.

11:10:49 5 THE COURT: Hang on. I haven't heard a question yet.
11:10:51 6 I have a pretty good recall of what was covered.

11:10:51 7 BY MR. KULWIN:

11:10:54 8 Q. With respect to James Langston on the ELM0, he advised
11:11:03 9 you, correct me if I'm wrong, that the man -- one of the
11:11:07 10 shooters rolled their mask up over their face?

11:11:10 11 A. Yes.

11:11:11 12 Q. Okay. And Randy Langston also told you the exact same
11:11:14 13 thing?

11:11:15 14 A. Yes.

11:11:16 15 Q. And you had no knowledge one way or the other whether
11:11:45 16 Sandra Langston wanted to be involved as being a witness in
11:11:48 17 this case, did you?

11:11:49 18 MR. LOEVY: Objection.

11:11:51 19 THE COURT: Sustained.

11:11:52 20 MR. KULWIN: If I may have a moment, Judge.

11:11:56 21 THE COURT: Yep.

11:11:57 22 (Brief pause.)

11:12:02 23 MR. KULWIN: Nothing further, Judge.

11:12:03 24 THE COURT: I am really hoping to finish this witness
11:12:06 25 before the break. Proceed with the redirect.

11:12:06 1
11:12:06 2
11:12:10 3
11:12:10 4
11:12:10 5
11:12:15 6
11:12:16 7
11:12:17 8
11:12:20 9
11:12:24 10
11:12:29 11
11:12:33 12
11:12:38 13
11:12:39 14
11:12:40 15
11:12:45 16
11:12:48 17
11:12:48 18
11:12:51 19
11:12:51 20
11:12:54 21
11:12:57 22
11:12:58 23
11:13:01 24
11:13:03 25

- - -
^ WITNAME, REDIRECT EXAMINATION
BY MR. NOLAND:
BY MR. LOEVY:
Q. You were asked whether Sandra Langston didn't testify at
the criminal trial?
A. Repeat the question.
Q. You were asked whether Sandra Langston didn't actually
testify at Nate's criminal trial? All right. Isn't it true
that Sandra Langston, if she was called to describe who was
outside the window shortly before Fuddy was shot, she would
have had to acknowledge that those two people were light
complexioned?
MR. KULWIN: Objection, argumentative.
THE COURT: It's been covered sufficiently on the
direct, so the objection is sustained.
BY MR. LOEVY:
Q. You were asking?
A. Yes.
Q. When Mr. Kulwin was showing you Gerald's testimony, that
was June of '86, that was more than two years later, correct
/STKPHR-FRPLTS?
A. Gerald? I didn't talk to Gerald.
Q. Gerald was the guy whose transcript he showed you, that
was from June of '86?

11:13:04 1 THE COURT: The question is do you agree that 86 is
11:13:06 2 two years after 1984, that's the question.

11:13:09 3 THE WITNESS: Yes.

11:13:09 4 BY MR. LOEVY:

11:13:10 5 Q. That's why it's important to contemporaneously record
11:13:14 6 contemporaneous details, right?

11:13:15 7 A. Yes.

11:13:16 8 Q. And you were asked if James was called at trial and
11:13:23 9 Mr. Kulwin asked you isn't it true that Mr. Fields was fully
11:13:26 10 aware of James's testimony, do you remember that question? He
11:13:30 11 just asked you a minute ago?

11:13:32 12 MR. KULWIN: I think the objection was sustained when
11:13:34 13 I asked it, Judge.

11:13:35 14 THE COURT: Just ask a question.

11:13:38 15 BY MR. LOEVY:

11:13:38 16 Q. All right. Mr. Fields was not fully aware that James
11:13:42 17 Langston was claiming that he saw the men and one of them was
11:13:48 18 the brother, was he? He wasn't fully aware of that because it
11:13:54 19 wasn't in the report, correct?

11:13:55 20 MR. MICHALIK: Objection, Judge. Speculation.

11:13:57 21 THE COURT: I am going to sustain the objection not
11:13:59 22 for that reason. I am going to sustain it under 403 because
11:14:02 23 it was covered sufficiently on direct.

11:14:03 24 BY MR. LOEVY:

11:14:03 25 Q. You told Mr. Kulwin that James rolled the mask up over his

11:14:08 1 face. James told you who he saw when the mask was off the
11:14:11 2 face, right?
11:14:12 3 A. James told me who he saw?
11:14:13 4 Q. Yeah. It was the brother of the Baldwin, right?
11:14:16 5 A. With the mask?
11:14:18 6 Q. No. He said I saw the guy's face and it was a brother of
11:14:22 7 a Baldwin, right?
11:14:23 8 MR. KULWIN: Objection, Judge, misstates the report
11:14:26 9 and the testimony. It's argumentative.
11:14:29 10 THE COURT: Put the question again.
11:14:30 11 BY MR. LOEVY:
11:14:31 12 Q. All right. James and Randy told you the exact same story,
11:14:34 13 right, one man, mask rolled up, correct?
11:14:37 14 A. Yes.
11:14:37 15 Q. Okay. Were they -- it's possible then that they were just
11:14:40 16 before you got there talking about recollection?
11:14:42 17 MR. KULWIN: Objection,.
11:14:44 18 THE COURT: The objection is sustained. It's
11:14:45 19 speculation.
11:14:46 20 BY MR. LOEVY:
11:14:46 21 Q. James and Randy's story tracked each other, correct?
11:14:49 22 MR. KULWIN: Objection, asked and answered.
11:14:50 23 THE COURT: Covered sufficiently, I agree.
11:14:52 24 Sustained.
11:14:52 25 BY MR. LOEVY:

11:14:52 1 Q. You were asked about Mr. Hawkins. First of all, Nate's
11:14:55 2 name did not come up any time in 1984, correct, during the
11:14:59 3 entire investigation?
11:14:59 4 A. No, it did not.
11:15:01 5 Q. All right. Mr. Hawkins' name did, though, didn't it?
11:15:04 6 A. No.
11:15:05 7 Q. Showing you the investigative file, and this is the page?
11:15:12 8 THE COURT: Page number?
11:15:12 9 MR. LOEVY: I don't have a page number. I'll show
11:15:16 10 Mr. Kulwin.
11:15:16 11 THE COURT: Show it to counsel then.
11:15:20 12 BY MR. LOEVY:
11:15:21 13 Q. Take a look and identify for the jury what it is. It's a
11:15:32 14 rap sheet?
11:15:32 15 A. It's a rap sheet, yes.
11:15:34 16 Q. Of Mr. Hawkins?
11:15:35 17 A. Yes.
11:15:35 18 Q. What's the date stamp on it?
11:15:37 19 A. Date stamped on the 27th of April 1984.
11:15:40 20 Q. I'll represent to you that comes from the official
11:15:44 21 investigative file that suggests that Mr. Hawkins was a
11:15:47 22 suspect originally, correct?
11:15:48 23 MR. KULWIN: Objection, Judge, as to what is
11:15:50 24 suggests. Calls for speculation.
11:15:52 25 THE COURT: Hang on a second.

11:15:53 1 MR. MICHALIK: And as to where it comes from.

11:15:55 2 THE COURT: Well, so what document -- what exhibit

11:15:58 3 are you saying that it came from?

11:15:59 4 MR. LOEVY: It's Plaintiff's Exhibit 1, pages 25, 26

11:16:03 5 is from the investigative file.

11:16:04 6 MR. KULWIN: Your Honor. Sorry. I apologize. I'm

11:16:10 7 sorry. That was my fault.

11:16:10 8 THE COURT: All right. So rephrase the question and

11:16:13 9 I'll determine at that point whether to sustain the objection

11:16:16 10 or not.

11:16:17 11 BY MR. LOEVY:

11:16:17 12 Q. Would you agree that this document from the investigative

11:16:21 13 file suggests that Hawkins had something to do -- that the

11:16:25 14 police thought Hawkins had something to do with the murder as

11:16:28 15 far back as the day of the murder?

11:16:29 16 MR. KULWIN: Objection, Judge.

11:16:30 17 THE COURT: Sustained.

11:16:31 18 BY MR. LOEVY:

11:16:32 19 Q. This document reflects that in the investigative file

11:16:34 20 Hawkins' rap sheet was pulled on or about the date of the

11:16:38 21 murder, correct?

11:16:38 22 MR. KULWIN: Objection, Judge.

11:16:40 23 THE COURT: He can answer that.

11:16:40 24 BY MR. LOEVY:

11:16:42 25 Q. Correct?

11:16:44 1 A. According to the date. I have no knowledge of
11:16:46 2 Mr. Hawkins.

11:16:46 3 THE COURT: You are referring to that date stamp
11:16:48 4 that's in a rectangle at the bottom?

11:16:51 5 MR. LOEVY: Yes.

11:16:52 6 THE COURT: I am asking him.

11:16:53 7 THE WITNESS: Yes.

11:16:53 8 BY MR. LOEVY:

11:16:54 9 Q. You can read it better than I can. What does it say?

11:16:57 10 THE COURT: What does say it say in that box.

11:17:00 11 THE WITNESS: Issued on inquiry, issued April 27,
11:17:05 12 1984.

11:17:05 13 BY MR. LOEVY:

11:17:06 14 Q. And the reason people pull rap sheets is so they can get
11:17:10 15 photographs, right?

11:17:11 16 A. Yes.

11:17:11 17 Q. And this is in fact a photograph of Earl Hawkins, is it
11:17:14 18 not?

11:17:15 19 THE COURT: What exhibit is this from?

11:17:17 20 MR. LOEVY: These don't have a Bates number. It's
11:17:22 21 the actual exhibit from Exhibit 1.

11:17:25 22 THE COURT: The question is is that a photograph of
11:17:27 23 Earl Hawkins.

11:17:28 24 THE WITNESS: I don't know what Earl Hawkins looks
11:17:30 25 like.

11:17:30 1 THE COURT: That's the answer. Go ahead. Ask
11:17:32 2 another question.
11:17:33 3 BY MR. LOEVY:
11:17:34 4 Q. The reason people pull rap sheets is so they can get
11:17:38 5 photographs to show witnesses?
11:17:39 6 A. Yes.
11:17:39 7 Q. So if this photograph and rap sheet was in the
11:17:42 8 investigative file, it is a fair assumption that at least some
11:17:46 9 police officer thought that Mr. Hawkins' photograph in 1984
11:17:50 10 should be shown to witnesses, correct?
11:17:52 11 MR. KULWIN: Argumentative.
11:17:52 12 THE COURT: The same question I sustained an
11:17:56 13 objection to, I'm sustaining it again.
11:17:58 14 BY MR. LOEVY:
11:17:58 15 Q. Do you know if any witness identified Mr. Hawkins in 1984?
11:18:01 16 A. I have no idea.
11:18:02 17 Q. Do you know why Mr. Hawkins' photo was pulled back in '84?
11:18:05 18 A. No, I do not.
11:18:07 19 Q. There is no document in the file explaining why Hawkins,
11:18:10 20 his photograph and rap sheet were pulled back in April 84, is
11:18:14 21 there?
11:18:14 22 A. No.
11:18:15 23 Q. You have never seen any document or explanation for that,
11:18:17 24 have you?
11:18:17 25 A. No, I have not.

11:18:20 1 Q. You were asked about Gerald Morris and whether he was
11:18:26 2 present when you interviewed Sandra. You don't have an actual
11:18:30 3 recollection of the interview, correct?

11:18:32 4 MR. MICHALIK: Objection, asked and answered.

11:18:33 5 THE COURT: Sustained. Covered sufficiently.

11:18:34 6 BY MR. LOEVY:

11:18:34 7 Q. All right. There were 12 Langston brothers and sisters.
11:18:37 8 Do you remember that?

11:18:37 9 A. I have no knowledge how many there were.

11:18:39 10 Q. You didn't write down every brother and sister if they
11:18:42 11 weren't claiming to be a witness, right?

11:18:43 12 A. I just talked -- the people I talked to, the Langstons I
11:18:47 13 talked to, the.

11:18:49 14 MR. LOEVY: The question.

11:18:50 15 THE COURT: He's answered the question. Ask another
11:18:53 16 one.

11:18:54 17 BY MR. LOEVY:

11:18:55 18 Q. Isn't it true that you only wrote down people who were
11:18:58 19 claiming to be witnesses?

11:18:59 20 A. We only talked to four people that day, that might.

11:19:05 21 Q. How do you know you didn't talk to the other 8 Langston
11:19:09 22 brothers and sisters?

11:19:09 23 A. I have four documented that's who I talked to on that
11:19:17 24 particular day.

11:19:18 25 Q. And you wrote down the names and information from people

11:19:20 1 that day who were claiming to be witnesses, correct?

11:19:23 2 MR. KULWIN: Objection, Judge, argumentative and
11:19:25 3 asked and answered.

11:19:25 4 THE COURT: Asked and answered, sustained.

11:19:26 5 BY MR. LOEVY:

11:19:27 6 Q. Let's talk about the Baldwin brothers. The investigative
11:19:31 7 stems you described to Mr. Michalik, you don't actually
11:19:33 8 remember doing those steps, right?

11:19:35 9 A. Which one?

11:19:36 10 Q. When you were telling them you went here, then we went
11:19:38 11 here, we talked to that person, you don't actually remember
11:19:41 12 that, do you?

11:19:42 13 A. Yes, I remember. From the reports.

11:19:45 14 Q. All right. So you're inferring what happened because you
11:19:48 15 can read the reports, correct?

11:19:49 16 MR. MICHALIK: Objection.

11:19:51 17 THE COURT: Overruled.

11:19:52 18 BY MR. LOEVY:

11:19:52 19 Q. Correct?

11:19:52 20 A. Yes.

11:19:53 21 Q. But you don't remember it, right?

11:19:54 22 A. I was -- I do -- I remember what I read in the reports.

11:20:03 23 Q. And you know you wouldn't have written it down if it
11:20:05 24 wasn't true, right?

11:20:06 25 A. It would have to be true.

11:20:08 1 Q. That's why police officers document things, so that years
11:20:11 2 later they can say what happened, correct?
11:20:13 3 MR. KULWIN: Objection, Judge, argumentative, asked
11:20:15 4 and answered.
11:20:15 5 THE COURT: Asked and answered, sustained.
11:20:16 6 BY MR. LOEVY:
11:20:16 7 Q. All right. You talked to Mr. Michalik about the Baldwin's
11:20:21 8 alibi. Isn't it true you never spoke to the Baldwins?
11:20:24 9 A. No, we did not speak to the Baldwins.
11:20:28 10 Q. So you are not claiming that you did a comprehensive
11:20:32 11 investigation to rule out the Baldwins, are you?
11:20:34 12 MR. MICHALIK: Objection, argumentative.
11:20:35 13 THE COURT: Sustained.
11:20:36 14 BY MR. LOEVY:
11:20:38 15 Q. The people that were identifying the Baldwins, that was in
11:20:41 16 1984, correct?
11:20:44 17 A. Yes.
11:20:44 18 Q. That was more than a year before O'Callaghan got
11:20:48 19 reinolved, correct?
11:20:49 20 A. Yes.
11:20:49 21 Q. Now, Mr. Michalik asked you questions about this GPR and
11:20:54 22 the investigative file. This is Plaintiff's Exhibit 1-106.
11:20:59 23 This GPR contained the information you talked about in court
11:21:02 24 today about Olivia Al was and Eric Stewart and Chico, et
11:21:07 25 cetera?

11:21:07 1 A. Yes.

11:21:08 2 Q. That's how you were able to testify as you did this
11:21:11 3 morning, correct?

11:21:11 4 A. Yes.

11:21:12 5 MR. KULWIN: I am going to object on the same topic.

11:21:15 6 THE COURT: The point has been covered sufficiently,
11:21:17 7 more than sufficiently at this point.

11:21:19 8 BY MR. LOEVY:

11:21:19 9 Q. All right. Do you have any explanation for why this GPR
11:21:21 10 was not turned over in the criminal case?

11:21:23 11 A. No, I don't.

11:21:26 12 Q. Should it have been turned over?

11:21:28 13 A. It should have been turned over.

11:21:30 14 Q. Was it the policies and practices of the police department
11:21:33 15 at that time to turn over documents of this type?

11:21:35 16 MR. KULWIN: Object, asked and answered, beyond the
11:21:37 17 scope.

11:21:37 18 THE COURT: I don't know that it's beyond the scope,
11:21:40 19 and I don't recall if it was asked. So that's the question.
11:21:43 20 Is it the policies and practices of the police department at
11:21:45 21 that time to turn over reports like this?

11:21:47 22 THE WITNESS: The GPR, what are you talking about?

11:21:53 23 THE COURT: The GPR.

11:21:54 24 THE WITNESS: Yes.

11:21:55 25 BY MR. LOEVY:

11:21:55 1 Q. You were asked about a tip you got from a janitor who
11:21:59 2 worked at the CHA building, do you remember that?
11:22:01 3 A. Yes.
11:22:02 4 Q. And the explanation for the phone number that didn't make
11:22:04 5 much sense how they got the phone number?
11:22:06 6 A. It was different.
11:22:07 7 Q. Yeah. But obviously, a witness like a janitor might have
11:22:10 8 relevant information, right?
11:22:11 9 A. Which he shared with us, yes.
11:22:14 10 Q. And he might have a reason to try to muffle where it came
11:22:17 11 from, right?
11:22:18 12 A. I don't know what his intentions were.
11:22:22 13 Q. All right. Are you supposed to turn over all of that kind
11:22:25 14 of information to the criminal defendant?
11:22:26 15 A. We investigate it and it was put on a GPR, we turned over
11:22:31 16 GPR in, it should have.
11:22:33 17 Q. It should have. The system, in other words, the system
11:22:37 18 doesn't really contemplate that the police check it out,
11:22:40 19 decide it has no value, and then not turn it over, correct?
11:22:43 20 MR. KULWIN: Objection, asked and answered.
11:22:44 21 THE COURT: Sustained. May I see the lawyers at
11:22:45 22 sidebar. /STPH*FPLT sidebar.)
11:22:55 23 THE COURT: I am not going to trot out your word
11:22:57 24 filibustering. Just because a couple of questions were asked
11:23:00 25 on cross does not mean you get to redo the direct, and it does

11:23:05 1 not mean you get to ask this question for the 1500th time. I
11:23:11 2 am.

11:23:11 3 MR. LOEVY: I am about done.

11:23:13 4 THE COURT:

11:23:16 5 (The following proceedings were had in open court in the
11:23:19 6 presence and hearing of the jury:)

11:23:19 7 THE COURT: Proceed.

11:23:19 8 BY MR. LOEVY:

11:23:20 9 Q. All right. You were asked by Mr. Michalik if you put your
11:23:25 10 notes in the supp reports, correct?

11:23:26 11 A. Yes.

11:23:26 12 Q. And looking at the notes on James Langston, you were asked
11:23:35 13 if you transfer all of your notes in the supp report, correct?

11:23:39 14 A. My notes, yes.

11:23:40 15 Q. The notes didn't get into the supp report, could we agree
11:23:43 16 on that?

11:23:44 17 MR. KULWIN: Objection, asked and answered.

11:23:46 18 THE COURT: I think this was covered on direct. I am
11:23:48 19 going to sustain the objection.

11:23:49 20 MR. LOEVY: I have no further questions, your Honor.

11:23:54 21 MR. MICHALIK: Just one, your Honor.

11:23:56 22 - - -

11:23:56 23 ^ WITNAME, RECROSS-EXAMINATION

11:23:58 24 BY MR. LOEVY:

11:23:58 25 BY MR. MICHALIK:

11:24:02 1 Q. Mr. Bogdalek, referring to your notes and your
11:24:10 2 supplementary report, why didn't you tell anyone about the
11:24:13 3 notes that were missing at the state's attorney?
11:24:14 4 MR. LOEVY: Objection, your Honor. Scope. I didn't
11:24:16 5 talk about that at all.
11:24:17 6 THE COURT: Overruled.
11:24:18 7 THE WITNESS: Why didn't I turnover my notes?
11:24:21 8 BY MR. MICHALIK:
11:24:22 9 Q. No. Let me ask the question again. Why didn't you tell
11:24:24 10 anyone that you didn't see your notes when you were -- noticed
11:24:28 11 that they were missing from the file at the state's attorney's
11:24:30 12 office?
11:24:30 13 A. Because everything that was ^ in my notes would have been
11:24:35 14 -- it's my common practice, my procedure is to take the
11:24:39 15 information from the notes and transcribe it onto the supp.
11:24:44 16 Q. So everything from the notes was in the supp?
11:24:46 17 A. Yes.
11:24:47 18 MR. LOEVY: Objection.
11:24:48 19 MR. MICHALIK: No further questions.
11:24:49 20 MR. KULWIN: Two questions, Judge.
11:24:51 21 - - -
11:24:51 22 ^ WITNAME, RECROSS-EXAMINATION
11:24:51 23 BY MR. LOEVY:
11:24:51 24 BY MR. KULWIN:
11:24:52 25 Q. Former detective Bogdalek, the date of the murder as

11:24:59 1 recorded in your report is what date?

11:25:01 2 A. The 28th of April.

11:25:06 3 Q. Okay. And the date on Mr. Hawkins' rap sheet that

11:25:11 4 Mr. Loevy with a referring to was what date?

11:25:13 5 A. An inquiry was made on April 27th, 1984.

11:25:19 6 MR. KULWIN: Thank you. Nothing further, your Honor.

11:25:21 7 MR. LOEVY: May I ask about that?

11:25:22 8 THE COURT: I'll see what the question is.

11:25:24 9 - - -

11:25:24 10 ^ WITNAME, REDIRECT EXAMINATION

11:25:25 11 BY MR. NOLAND:

11:25:25 12 BY MR. LOEVY:

11:25:25 13 Q. In those days it was a manual stamp that you turned the
11:25:28 14 date over, correct?

11:25:29 15 A. I don't recall exactly. You mean like a rubber stamp.

11:25:34 16 Q. Where you literally had to physically change the date
11:25:37 17 over, correct?

11:25:37 18 A. I believe so.

11:25:39 19 MR. LOEVY: I have no further questions.

11:25:40 20 THE COURT: Do any of the jurors have any questions
11:25:41 21 for the witness? I don't see anybody writing. Oh, I see one.
11:26:07 22 (Sidebar) .

11:26:09 23 THE COURT: Did he check out Edward Stewart's alibi
11:26:11 24 the next day when McDonald's open up again? .

11:26:19 25 THE COURT: All right. There was this questions

11:26:21 1 about he had wart Stewart said he had worked at the McDonald's
11:26:24 2 and you said you tried to call the McDonald's and they were
11:26:26 3 closed. The question is did you check out the next day when
11:26:30 4 they opened up, just answer yes or no and then I'll ask you
11:26:33 5 why.

11:26:33 6 THE WITNESS: No.

11:26:34 7 THE COURT: Why?

11:26:35 8 THE WITNESS: We were off the next two days. We
11:26:37 9 left.

11:26:37 10 THE COURT: You left it for somebody else to do?

11:26:40 11 THE WITNESS: Yes.

11:26:41 12 THE COURT: Any follow up based on that?

11:26:42 13 MR. KULWIN: No.

11:26:43 14 MR. LOEVY: No.

11:26:43 15 THE COURT: The witness is excused. We are going to
11:26:45 16 take a break. We will resume in 10.

11:36:37 17 (Short break.)

11:36:40 18 (The following proceedings were had in open court outside
11:36:41 19 the presence and hearing of the jury:)

11:36:41 20 THE COURT: Ready to resume.

11:36:46 21 MR. BURNS: Your Honor, one question. Do we
11:36:48 22 anticipate that we will then finish the testimony of Mr.
11:36:51 23 Hawkins prior to your lunch break?

11:36:53 24 THE COURT: No. Not at this point.

11:36:56 25 MR. BURNS: All right.

11:36:57 1 THE COURT: I am going to break at 12:30. I am not
11:37:01 2 going to go past 12:30.

11:37:04 3 MR. BURNS: Then over lunch, we will address and save
11:37:06 4 you time.

11:37:06 5 THE COURT: What do you mean?

11:37:07 6 MR. BURNS: It's relative to and maybe we should talk
11:37:10 7 just to the side outside of his presence, Mr. Loevy.

11:37:20 8 MR. BURNS: Very quickly, Mr. Hawkins is represented
11:37:24 9 by Mr. Stetler, Mr. Stetler said he would make Mr. Hawkins
11:37:27 10 available to both plaintiff and defendant. We went over there
11:37:33 11 yesterday and had an opportunity to meet with him. Mr. Loevy.

11:37:35 12 THE COURT: Here here in the building? You got open?
11:37:39 13 You said over here.

11:37:39 14 MR. BURNS: Over here in this building, yes.

11:37:41 15 THE COURT: Yesterday?

11:37:42 16 MR. BURNS: Yes.

11:37:45 17 THE COURT: You mean at the U.S. Attorney's Office is
11:37:47 18 that right?

11:37:47 19 MR. BURNS: Yes.

11:37:48 20 THE COURT: Okay.

11:37:48 21 MR. BURNS: So Mr. Loevy advised us that he was
11:37:51 22 denied that opportunity and that may be some of the
11:37:54 23 questioning. Mr. Stetler is here. It's our understanding
11:37:57 24 that he wasn't denied the opportunity, that he was given that
11:38:00 25 opportunity and didn't do it. Before this gets too messy in

11:38:03 1 front of jury, I think that's a matter that we need to
11:38:06 2 discuss, especially because Mr. Stetler, his counsel is here,
11:38:10 3 and actually arranged for it.

11:38:12 4 MR. LOEVY: Your Honor, may I tell what I was going
11:38:14 5 to elicit?

11:38:14 6 THE COURT: Yes.

11:38:15 7 MR. LOEVY: We were asked -- we were told that he was
11:38:17 8 willing to meet. We asked that there be one meeting with the
11:38:20 9 defense and the plaintiff were there together, we asked that
11:38:23 10 that be personally communicated to Mr. Hawkins. That was
11:38:25 11 refused, which is fine, that's his prerogative. That's one
11:38:30 12 thing I would like to cross-examine him. There is not going
11:38:33 13 to be a joint meeting, but if you want to interview him
11:38:38 14 separately, but you can't impeach him. If he says something
11:38:41 15 inconsistent, that's the only way you will meet with him.
11:38:44 16 That's relevant, that's cross-examinable.

11:38:47 17 MR. BURNS: I think in response to suggest that he
11:38:49 18 was denied the opportunity, he was given the opportunity.

11:38:51 19 THE COURT: I mean, if somebody says I was denied the
11:38:54 20 opportunity, then I'll make him ask a more specific question.
11:38:58 21 He wasn't given an opportunity that he found acceptable is
11:39:00 22 what it boils down to.

11:39:03 23 MR. KULWIN: I would like to inquire of Mr. Stetler.

11:39:06 24 THE COURT: You don't. I am bringing the jury in.

11:39:09 25 MR. KULWIN: I can ask him --

11:39:10 1 THE COURT: You can do anything you want. I am
11:39:12 2 bringing the jury in.

11:39:30 3 (The jury enters the courtroom.)

11:40:39 4 THE COURT: The jurors and everybody else can have a
11:40:41 5 seat.

11:40:42 6 (Witness sworn.)

11:40:49 7 THE COURT: Mr. Loevy, you can go ahead.

11:40:51 8 MR. LOEVY: Thank you, your Honor.

11:40:51 9 - - -

11:40:51 10 ^ WITNAME, DIRECT EXAMINATION

11:40:52 11 BY MR. NOLAND:

11:40:52 12 BY MR. LOEVY:

11:40:53 13 Q. If you would state your name for the record?

11:40:54 14 A. Earl Hawkins.

11:40:55 15 Q. How old are you, sir?

11:40:56 16 A. 61.

11:40:56 17 Q. And you were a general in the El Rukn organization back in
11:41:01 18 the '80s, correct?

11:41:02 19 A. Yes, sir.

11:41:02 20 Q. Approximately how many members of the organization were
11:41:06 21 there?

11:41:06 22 A. Different at different times. Mostly 700 to a thousand,
11:41:14 23 probably.

11:41:14 24 Q. There was about 20 to 25 generals, correct, during the mid
11:41:20 25 '80s?

11:41:20 1 A. Somewhere around there, yes.

11:41:21 2 Q. And that's the highest rank?

11:41:23 3 A. Yes.

11:41:23 4 Q. They are the ones closest to Jeff Fort and the trusted

11:41:28 5 inner circle?

11:41:28 6 A. Yes.

11:41:29 7 Q. In the organization you had the role of enforcer, correct?

11:41:32 8 A. At one time.

11:41:33 9 Q. You testified at Mr. Fields' second trial on

11:41:36 10 cross-examination, you testified in his second criminal trial,

11:41:39 11 correct?

11:41:39 12 A. Yes, sir.

11:41:42 13 Q. And you were asked on cross-examination how many murders

11:41:44 14 you have been involved in. Do you recall that?

11:41:46 15 A. Yes, sir.

11:41:47 16 Q. What was your answer?

11:41:48 17 A. Six.

11:41:51 18 Q. Do you remember being asked these questions and this is

11:41:56 19 your testimony in 2009 at page 100, lines 8 through 12.

11:42:00 20 A lot of them, yes. Over 50? No. Over 40? No, no

11:42:07 21 ma'am. 30? No. How many? I'd say 10 to 15. That's within

11:42:11 22 the years 66 and 85? Yes, ma'am. You did then between 83, 81

11:42:16 23 and 85? Ma'am, I said you did ten between 81 and /# will 5?

11:42:22 24 Yes, ma'am, planning. Before that? Huh? Before that, how

11:42:27 25 many did you do? Five, ten do you see that?

11:42:30 1 A. Yes.

11:42:30 2 Q. You also testified that you pled guilty to about ten

11:42:33 3 murders, correct?

11:42:33 4 A. Yes.

11:42:34 5 Q. And at the trial as cross-examination, you were requested

11:42:39 6 to name the people you pled guilty to murdering, correct?

11:42:42 7 A. Yes.

11:42:42 8 Q. Who did you plead guilty to murdering?

11:42:44 9 A. .I don't understand your question. Which time?

11:42:50 10 Q. Who did you plead guilty to murdering?

11:42:54 11 A. Williamer /OL free man, and other people, I guess.

11:43:11 12 Q. Lemont timber /HRAPB?

11:43:14 13 A. No.

11:43:15 14 Q. This was all part?

11:43:16 15 A. No.

11:43:16 16 Q. Showing you your second criminal trial testimony from Mr.

11:43:19 17 Hawkins' trial?

11:43:20 18 THE COURT: From Mr. Fields' trial.

11:43:22 19 BY MR. LOEVY:

11:43:23 20 Q. I'm sorry, Mr. Fields' trial, starting in the middle those

11:43:28 21 acts were in fact you pled guilty to conspiracy to murder

11:43:32 22 Patrina Thomas?

11:43:33 23 "ANSWER: Yes, ma'am.

11:43:34 24 "QUESTION: You pled guilty to conspiracy to murder

11:43:37 25 1-a-m-o-n-t, Lamont Timberland,

11:43:37 1 "ANSWER: Yes, ma'am.

11:43:34 2 "QUESTION: You pled guilty to conspiracy to murder
11:43:43 3 Barnett Hall,

11:43:43 4 "ANSWER: Yes, ma'am.

11:43:44 5 "QUESTION: You pled guilty to conspiracy to murder
11:43:44 6 Eugene Harrison?

11:43:44 7 "ANSWER: No.

11:43:45 8 "QUESTION: You did plead guilty to conspiracy to
11:43:47 9 murder George Thomas? Yes. You pled guilty to Willie Bibbs?
11:43:53 10 Yes, ma'am. Conspiracy to murder Chalmers Tyler? Yes, ma'am.
11:43:57 11 Conspiracy to murder Melvin Ewing? Yes, ma'am. Conspiracy to
11:44:01 12 murder Ronald Bell? Yes, ma'am. You also pled guilty to a
11:44:04 13 number of murders? Yes, ma'am.

11:44:04 14 MR. KULWIN: Judge, I am going to object. It's not
11:44:07 15 impeaching.

11:44:07 16 THE COURT: Overruled. Did he accurately read that?
11:44:10 17 Did he read it accurately.

11:44:12 18 THE WITNESS: Yes.

11:44:13 19 THE COURT: Okay. Thank you.

11:44:14 20 BY MR. LOEVY:

11:44:15 21 Q. All right. You were also asked at the trial, the criminal
11:44:17 22 trial, if you pled guilty because you were guilty. Do you
11:44:20 23 remember being asked that?

11:44:21 24 A. Yes.

11:44:23 25 Q. Do you remember what your answer was?

11:44:24 1 A. No, but I can tell you right.

11:44:26 2 Q. What's your answer right now?

11:44:28 3 A. I wasn't guilty.

11:44:28 4 Q. Do you remember being asked this question page 80, lines

11:44:34 5 19 to 24. There came a time when you pled guilty to the

11:44:36 6 indictment?

11:44:37 7 "ANSWER: Yes, ma'am

11:44:38 8 "QUESTION: And you did plead guilty because you were

11:44:39 9 guilty?

11:44:40 10 "ANSWER: Pretty much, yes, ma'am

11:44:41 11 MR. KULWIN: Object, not impeaching.

11:44:43 12 MR. LOEVY: First of all, it's in the criminal trial.

11:44:46 13 THE COURT: It's in the criminal trial. Honestly,

11:44:48 14 the answer to his question here got a little garbled. I'm

11:44:51 15 seeing what's in the realtime, so I am going to let it stand.

11:44:54 16 Was that your testimony from the criminal trial?

11:44:55 17 THE WITNESS: Yes, sir.

11:44:57 18 THE COURT: Okay. Thank you.

11:44:58 19 BY MR. LOEVY:

11:44:59 20 Q. One of the murders you committed was Joe White and D

11:45:04 21 Edwards Vaughn?

11:45:07 22 A. Yes.

11:45:08 23 Q. Who committed those murders?

11:45:09 24 A. Me and Anthony Sumner.

11:45:12 25 Q. Just the two of you?

11:45:13 1 A. Yes.

11:45:15 2 Q. Not Nate Fields?

11:45:16 3 A. I never said that.

11:45:17 4 Q. Why did you and Sumner go to the white's home that night?

11:45:20 5 A. To rob them.

11:45:21 6 Q. What were you looking for?

11:45:22 7 A. Money and cocaine.

11:45:23 8 Q. Were you using drugs on a daily basis during the whole

11:45:26 9 first half of the 1980s, sir?

11:45:28 10 A. Yes.

11:45:28 11 Q. Were you and Sumner using cocaine together every single

11:45:31 12 day?

11:45:31 13 A. Probably so.

11:45:33 14 Q. And you were also taking heroin to come down?

11:45:36 15 A. Sometimes, yes.

11:45:38 16 Q. You were cross-examined at Mr. Fields' criminal trial

11:45:40 17 about your drug abuse, correct?

11:45:42 18 A. Yes.

11:45:43 19 Q. How did you get into Mr. White's home?

11:45:45 20 A. Anthony Sumner knew him and he let us in.

11:45:51 21 Q. You forced your way in with a gun, didn't you?

11:45:54 22 A. He let us in.

11:45:55 23 Q. All right. This is page 2687 of the April -- do you

11:45:59 24 remember testifying at the hearing in this case in April 2014?

11:46:02 25 This is lines 15 through 24.

11:46:07 1 MR. BURNS: Hang on one second.

11:46:08 2 BY MR. LOEVY:

11:46:09 3 Q.

11:46:09 4 "QUESTION: And you knocked on the door and Mr. White
11:46:14 5 answered; is that correct in an answer I believe so. And

11:46:17 6 Sumner said he wanted to buy cocaine; is that correct in

11:46:19 7 "ANSWER: Yes, sir.

11:46:20 8 "QUESTION: Sometime later you pulled out a gun,
11:46:22 9 correct?

11:46:22 10 "ANSWER: Yes, sir.

11:46:24 11 "QUESTION: And you said where is the drugs and the
11:46:26 12 money we want the drugs and the money; is that correct, sir?

11:46:29 13 Answer answer yes, sir. That was the testimony you gave,
11:46:32 14 correct?

11:46:32 15 A. Yes.

11:46:33 16 Q. All right. And Mr. White begged you not to hurt them,
11:46:36 17 correct?

11:46:36 18 A. Yes.

11:46:36 19 Q. And you told them you weren't going to hurt that couple,
11:46:39 20 correct?

11:46:40 21 A. Yes.

11:46:40 22 Q. And then you tied up Mr. White's wife, DEA Vaughn, right?

11:46:45 23 A. Yes.

11:46:45 24 Q. And Mr. Vaughn was?

11:46:47 25 A. Yes.

11:46:48 1 Q. And then what did you do after they were tied up and --
11:46:52 2 they were defenseless when they were tied up, correct?
11:46:54 3 A. Yes.
11:46:55 4 Q. Okay. What happened next?
11:46:56 5 A. They was tied up, we were searching the house for the
11:47:01 6 money and the cocaine, and we stepped in the hallway and then
11:47:06 7 I came, after Sumner came back in, there was some rustling, he
11:47:11 8 went back in.
11:47:11 9 Q. He stabbed him 30 times, didn't he?
11:47:13 10 A. Yes, he was stack him.
11:47:15 11 Q. What did you do when Anthony Sumner stabbed these people
11:47:19 12 30 times?
11:47:20 13 A. Shot both of them.
11:47:21 14 Q. Where did you shoot them?
11:47:22 15 A. In the head.
11:47:23 16 Q. How many times?
11:47:23 17 A. Once or twice.
11:47:25 18 Q. Why did you do that, sir?
11:47:28 19 A. To kill them.
11:47:29 20 Q. You had no idea their kids were watching, correct?
11:47:31 21 A. No.
11:47:31 22 Q. You had no idea, right?
11:47:33 23 A. No, I had no idea of that.
11:47:36 24 Q. That was lucky for them, correct?
11:47:37 25 MR. BURNS: Objection?

11:47:38 1 THE COURT: Sustained.

11:47:39 2 BY MR. LOEVY:

11:47:39 3 Q. The reason you killed the wife is because you didn't want

11:47:41 4 to be any witnesses, correct?

11:47:43 5 A. Yes.

11:47:43 6 Q. Did you find any drugs and money?

11:47:45 7 A. Yes.

11:47:51 8 Q. How much did you steal?

11:47:53 9 A. \$700 and some -- maybe a half ounce of cocaine or

11:48:05 10 something.

11:48:05 11 Q. All right. What month and year was that, sir?

11:48:07 12 A. March.

11:48:16 13 Q. March '85?

11:48:17 14 A. Yes.

11:48:17 15 Q. After that you and Sumner went on the run, right?

11:48:21 16 A. Yes, sir.

11:48:21 17 Q. The goal was to escape from the police?

11:48:23 18 A. Yes, sir.

11:48:23 19 Q. And where did you go first?

11:48:25 20 A. What do you mean where did we go first?

11:48:35 21 Q. Where did you flee?

11:48:36 22 A. We need from the house.

11:48:38 23 Q. What city did you go to?

11:48:39 24 A. We were in Chicago.

11:48:41 25 Q. Okay. When you left Chicago, where did you go to?

11:48:43 1 A. We went to Milwaukee and Cleveland.
11:48:47 2 Q. And Cleveland?
11:48:48 3 A. Yes.
11:48:48 4 Q. The law caught up to you in east Cleveland, right?
11:48:52 5 A. Yes.
11:48:52 6 Q. Were you arrested in east Cleveland?
11:48:54 7 A. Yes, sir.
11:48:54 8 Q. Who were the law enforcement officers that arrested you at
11:48:57 9 that house in east Cleveland?
11:48:58 10 A. Some east Cleveland police officers and one I recognized
11:49:05 11 was a Brannigan.
11:49:08 12 Q. That's a Chicago police officer?
11:49:09 13 A. Yes.
11:49:10 14 Q. They raided the house where you were, right?
11:49:12 15 A. Yes, sir.
11:49:12 16 Q. And they started asking you questions, right?
11:49:14 17 A. Yes, sir.
11:49:15 18 Q. They were asking you about cold cases from back in the
11:49:18 19 neighborhood by the Fort, weren't they?
11:49:19 20 A. When they came into the house and they were searching us,
11:49:27 21 they asked me questions about some.
11:49:29 22 Q. They started after they were done searching you, they
11:49:33 23 started interrogating you, correct?
11:49:34 24 A. No, I don't remember it like that.
11:49:37 25 Q. Did you talk about the Vaughn/White murder with them in

11:49:40 1 east Cleveland?

11:49:41 2 A. No.

11:49:41 3 Q. Were they asking you about murders?

11:49:45 4 A. Yes.

11:49:45 5 Q. Were they asking you about the Smith/Hickman murder?

11:49:48 6 A. Yes, they might have mentioned it.

11:49:53 7 Q. Back in Cleveland?

11:49:54 8 A. Yes.

11:49:54 9 Q. Tell us what you remember.

11:49:56 10 A. They said your boy, your boy flipped on you, so we got

11:50:01 11 you, something like that in that lines.

11:50:03 12 Q. All right. Can you explain to me in context with the

11:50:06 13 Smith/Hickman, they were saying we got you on Smith/Hickman?

11:50:08 14 A. With murders, period.

11:50:10 15 Q. I'm asking about Smith/Hickman. What did they ask you

11:50:13 16 about Smith/Hickman?

11:50:13 17 A. I told you what they said sir.

11:50:17 18 Q. What did you understand it to mean when they said your boy

11:50:20 19 flipped on you on Smith/Hickman?

11:50:21 20 A. He didn't say Smith/Hickman. He said your boy flipped on

11:50:24 21 you, we got you.

11:50:26 22 Q. What did they ask you about Smith/Hickman murders?

11:50:28 23 A. They say your boy flipped on you, we got you.

11:50:31 24 Q. Did you understand that to mean you were going down for

11:50:34 25 the Smith/Hickman murders?

11:50:34 1 A. No.

11:50:35 2 Q. You knew who your boy was Sumner, right?

11:50:38 3 A. Yes.

11:50:39 4 Q. You weren't talking to the police, right?

11:50:42 5 A. No, sir.

11:50:43 6 Q. About any murders they were asking about, right?

11:50:46 7 A. No, sir.

11:50:47 8 Q. Anthony Sumner did start talking, didn't he?

11:50:50 9 A. Yes, sir.

11:50:51 10 Q. He decided he was going to flip to save himself, right?

11:50:53 11 A. He decided he was going to flip.

11:50:57 12 Q. And that hurt you, did it not?

11:50:59 13 A. He disappointed me.

11:51:01 14 Q. You and Anthony were very, very close at the time, weren't

11:51:04 15 be you?

11:51:04 16 A. Yes.

11:51:04 17 Q. Like brothers?

11:51:05 18 A. All of us was called brothers.

11:51:07 19 Q. You and Anthony in particular were like brothers, correct?

11:51:10 20 A. I don't understand your question. I just told you all of

11:51:16 21 us was like brothers.

11:51:17 22 Q. I am not asking about all of you. I am asking you about

11:51:20 23 you and Anthony?

11:51:21 24 A. If you have more than one brother, what's up?

11:51:24 25 Q. Very good.

11:51:25 1 Let's -- how quickly did the police bring up the
11:51:29 2 Smith/Hickman crime?
11:51:31 3 MR. BURNS: Objection, your Honor. Foundation.
11:51:33 4 THE COURT: Why don't you just ask when.
11:51:35 5 BY MR. LOEVY:
11:51:35 6 Q. All right. When did they bring up Smith/Hickman?
11:51:38 7 A. I thought it was when we got back to Chicago.
11:51:42 8 Q. All right. Your legal problems started when Sumner
11:51:47 9 started talking, correct?
11:51:48 10 A. Yes, sir.
11:51:48 11 Q. He implicated you in a number of murders, right?
11:51:51 12 A. Yes, sir.
11:51:51 13 Q. And in the Smith/Hickman case, he came to claim that you
11:51:57 14 had confessed to him about having killed Fuddy Smith, correct?
11:52:02 15 That was your understanding?
11:52:03 16 A. Could you ask that question again?
11:52:06 17 Q. Sure.
11:52:06 18 Did you come to have an understanding that Sumner was
11:52:10 19 claiming, although he wasn't involved in the Smith/Hickman
11:52:12 20 murder, you confessed to him of having done it?
11:52:15 21 A. Be yeah, I told him about it, if you want to use confess,
11:52:21 22 okay.
11:52:21 23 Q. I am not getting what you did. What Sumner was claiming.
11:52:25 24 He was claiming you confessed?
11:52:27 25 A. You said confessed. I told him about it.

11:52:32 1 Q. He wasn't involved in the murders?

11:52:33 2 A. Not then, no.

11:52:34 3 Q. All right. And do you know if the police brought up
11:52:39 4 Smith/Hickman to Sumner or if Sumner brought up Smith/Hickman
11:52:42 5 to the police?

11:52:43 6 MR. KULWIN: Objection.

11:52:43 7 THE COURT: It's a question does he know. You can
11:52:46 8 answer the question. Do you know who brought it up first
11:52:48 9 between the police and Sumner?

11:52:51 10 THE WITNESS: I don't know.

11:52:51 11 BY MR. LOEVY:

11:52:56 12 Q. All right. And you came to understand that his claim was
11:53:00 13 that you told him you did it with two guys -- two El Rukns
11:53:04 14 from Evanston and his landlord Nate Fields, correct?

11:53:07 15 A. Yes.

11:53:09 16 Q. How quickly did you come to understand that Sumner was
11:53:12 17 claiming you committed that crime with the two guys from
11:53:14 18 Evanston and his landlord?

11:53:15 19 A. Probably when I got arrested and they were telling me
11:53:19 20 about it.

11:53:20 21 Q. When you got arrested?

11:53:21 22 A. Yes.

11:53:21 23 Q. Back in May 1985, right?

11:53:23 24 A. Yes.

11:53:24 25 Q. All right. Sumner's landlord was also your landlord,

11:53:27 1 correct? Sumner's landlord was also your landlord, correct?

11:53:38 2 A. What did you ask me?

11:53:41 3 Q. Sumner's landlord was Nate Fields, right?

11:53:45 4 A. He answered the property?

11:53:48 5 Q. Did you understand the question?

11:53:49 6 A. Yes, sir.

11:53:49 7 Q. Okay. Sumner's landlord was your landlord, correct?

11:53:53 8 A. Yes, sir.

11:53:56 9 Q. Every month he would collect the rent, correct?

11:53:59 10 A. Who?

11:53:59 11 Q. Nate Fields?

11:54:03 12 A. That don't make him the landlord.

11:54:05 13 Q. Every month Nate Fields would collect the rent, right?

11:54:08 14 A. Correct.

11:54:09 15 Q. He was the building manager, correct?

11:54:10 16 A. Correct.

11:54:10 17 Q. He would do the maintenance work around the building,

11:54:13 18 correct?

11:54:13 19 A. He would collect the rent.

11:54:14 20 Q. He did maintenance work around the building too?

11:54:16 21 A. He would collect the rent, sir.

11:54:18 22 Q. All right. Did you know of Sumner's problem with the

11:54:21 23 rent?

11:54:21 24 A. They didn't pay his rent sometimes?

11:54:29 25 Q. Yeah.

11:54:30 1 A. Probably so, yes.

11:54:31 2 Q. Showing you Plaintiff's Exhibit 7, page 2, this is a
11:54:35 3 statement from Anthony Sumner, murder of Joe White and DEA
11:54:44 4 Vaughn which occurred on May 28 -- by the way, this statement
11:54:48 5 was made on January 3rd, 1992. Murder of Joe White and DEA
11:55:00 6 Vaughn which occurred on May 28th, 1985 at 1016 east 41st
11:55:05 7 place in Chicago. The statement of the buy the murders
11:55:08 8 happened is correct except that Nathson Fields was not
11:55:10 9 involved in the murders. That's true, is it not?

11:55:14 10 A. Yes.

11:55:15 11 Q. The reason I put Nathson Fields in the murder was I was
11:55:19 12 confused and afraid Nathson Fields had put my family out of
11:55:22 13 one of the El Rukn buildings and I did not like it. My
11:55:25 14 question to you, sir, is did Sumner tell you that, that he put
11:55:30 15 Fields into the Vaughn/White murder because he had put him out
11:55:33 16 and he didn't like him?

11:55:34 17 A. Not that I remember, no.

11:55:35 18 Q. The first time I told anybody that Fields was not
11:55:38 19 involved, and it goes on and says was later. But I want to
11:55:42 20 focus on this part here. I did not like him. Did you have
11:55:49 21 any knowledge that he didn't like nature Fields?

11:55:51 22 MR. BURNS: Objection?

11:55:51 23 THE COURT: Overruled.

11:55:52 24 THE WITNESS: Not that I remember.

11:55:53 25 BY MR. LOEVY:

11:55:57 1 Q. All right. When the police started asking you about
11:55:59 2 Smith/Hickman, they asked you about a lot of murders, didn't
11:56:03 3 they, by the way?

11:56:04 4 MR. KULWIN: Judge, can we get a foundation as to
11:56:06 5 when?

11:56:06 6 THE COURT: Yes.

11:56:07 7 BY MR. LOEVY:

11:56:07 8 Q. When do you recall the police asking you about murders?

11:56:10 9 A. After I got arrested in May of 1985.

11:56:12 10 Q. Okay. They were asking you about a lot of murders, right?

11:56:14 11 A. You could say that, yes, sir.

11:56:16 12 Q. All right. One of the murders they asked you about was
11:56:18 13 the Smith/Hickman murder, right?

11:56:19 14 A. Yes.

11:56:20 15 Q. And you denied any involvement, correct?

11:56:22 16 A. Yes.

11:56:24 17 Q. And you told them you could put me in a lineup because I
11:56:27 18 had nothing to do with it, right?

11:56:29 19 A. I don't think I told them to put me in a lineup.

11:56:33 20 Q. You said I don't oppose a lineup, right?

11:56:35 21 A. No matter if you oppose it or not, you get in one.

11:56:38 22 Q. All right. Showing you 86, page 18. This is a police
11:56:42 23 report that you didn't prepare dated May 20th, 1985
11:56:48 24 memorialized the interaction with you. It says that on May
11:56:52 25 18th you were placed under arrest . Is that accurate, sir?

11:56:57 1 A. Yes, sir.

11:56:58 2 Q. That would be four days after the raid in Cleveland,

11:57:01 3 wouldn't it?

11:57:01 4 A. Okay.

11:57:01 5 Q. Wouldn't it?

11:57:02 6 A. Okay.

11:57:02 7 Q. So were you not arrested for those whole four days?

11:57:05 8 A. Yes, sir.

11:57:06 9 Q. Were you for the four days before May 18th, you were free

11:57:13 10 to leave?

11:57:13 11 A. I didn't say that. I said I was arrested.

11:57:15 12 Q. You were arrested on May 18th, correct?

11:57:18 13 A. I was arrested on May 18th, yes.

11:57:20 14 Q. Okay. May 14th is when the house was raided in east

11:57:24 15 Cleveland, correct?

11:57:25 16 A. Okay.

11:57:25 17 Q. Correct?

11:57:26 18 A. Yes, sir.

11:57:27 19 Q. Okay. Were you free to leave between May 14th and May

11:57:30 20 18th?

11:57:30 21 A. Yes.

11:57:31 22 Q. Why didn't you?

11:57:32 23 A. I did.

11:57:33 24 Q. No. Before they arrested you, why didn't you leave?

11:57:36 25 A. What do you mean before they arrested me?

11:57:38 1 Q. Earl Hawkins was asked, allowed to place several calls to
11:57:42 2 your attorney. Do you remember that happening?
11:57:44 3 A. Yes.
11:57:44 4 Q. Hawkins was informed of his constitutional warnings and
11:57:48 5 denied being involved in any -- in these two homicides that
11:57:51 6 would probably be Smith/Hickman and Vaughn/White. Did you
11:57:54 7 deny it?
11:57:54 8 A. Yes, sir.
11:57:55 9 Q. You stated you did not need your attorney present during
11:57:58 10 any lineups as you didn't do anything. Did you say that?
11:58:01 11 A. Probably so.
11:58:01 12 Q. Later you pled not guilty to the crime, correct?
11:58:08 13 A. Yes, sir.
11:58:09 14 Q. And you've always been very clear that you did not shoot
11:58:13 15 Fuddy Smith, correct?
11:58:14 16 A. Yes, sir.
11:58:14 17 Q. You went on trial for this crime in June 1986, right?
11:58:20 18 A. Yes, sir.
11:58:20 19 Q. You were tried simultaneously with Nate Fields, right?
11:58:25 20 A. Yes, sir.
11:58:25 21 Q. And did you get convicted?
11:58:27 22 A. Yes, sir.
11:58:27 23 Q. What was the sentence?
11:58:28 24 A. Death.
11:58:30 25 Q. Did that scare you, sir?

11:58:32 1 A. Yes, sir.

11:58:33 2 Q. After you got convicted and sentenced to death, did you do
11:58:37 3 some rethinking about whether maybe you should make some deals
11:58:40 4 to testify against other people?

11:58:44 5 MR. KULWIN: Objection as to when, Judge.

11:58:47 6 THE COURT: He said after. That's sufficient.

11:58:48 7 THE WITNESS: Your question?

11:58:49 8 BY MR. LOEVY:

11:58:50 9 Q. After you got sentenced to death, did you start rethinking
11:58:53 10 whether maybe you should cooperate to save yourself?

11:58:56 11 A. I said I better come up with something quick because they
11:59:02 12 serious. That's what I thought.

11:59:04 13 Q. And by come up with something quick, you understood what
11:59:07 14 they wanted from you was to testify against other people,
11:59:09 15 correct?

11:59:10 16 A. Probably more than my knowledge of other crimes, yes.

11:59:15 17 Q. They wanted you to testify against other people, correct?

11:59:18 18 A. We hadn't reached that stage yet.

11:59:22 19 Q. All right. You initiated the possibility of being a
11:59:25 20 cooperator, correct?

11:59:25 21 A. Yes.

11:59:26 22 Q. How did you do it?

11:59:26 23 A. Wrote Lieutenant Brannigan a letter.

11:59:29 24 Q. I am going to show you Plaintiff's Exhibit 69. That is
11:59:32 25 your handwriting, is it not?

11:59:33 1 A. Yes.

11:59:35 2 Q. And this is the letter that you wrote, correct?

11:59:37 3 A. Yes.

11:59:38 4 Q. Dear Daniel, I write in hope -- I write you in hope that

11:59:47 5 in best interest of you and I can talk hoping you and I can

11:59:51 6 come to some mutual understanding that can benefit us both I

11:59:55 7 am sure before February 2. That's your letter, correct?

11:59:58 8 A. Yes, sir.

11:59:59 9 Q. What was the significance of February 2nd?

12:00:04 10 A. Probably when the death.

12:00:11 11 Q. This is your testimony at the April 2004 hearing. Do you

12:00:14 12 remember being asked this question, page 2692?

12:00:16 13 THE COURT: April 2000 what year?

12:00:19 14 MR. LOEVY: This is the April 2014 hearing in this

12:00:22 15 case.

12:00:22 16 THE COURT: You said 2004. That's why I asked.

12:00:24 17 MR. LOEVY: Thank you. This is lines 13 through 19.

12:00:27 18 "QUESTION: I hope we can come to some mutual

12:00:30 19 understanding that can benefit us both before February 2. Is

12:00:33 20 that what you wrote?

12:00:33 21 "ANSWER: Yes.

12:00:34 22 "QUESTION: Was February 2nd the date set for your

12:00:37 23 execution if you recall?

12:00:38 24 "ANSWER: No. I don't recall."

12:00:40 25 Did you give that answer, sir?

12:00:42 1 A. Yes.

12:00:42 2 Q. It's hard to remember dates years later, is it not?

12:00:46 3 A. Sometimes, yes.

12:00:49 4 Q. All right. Who came to see you in response to that

12:00:51 5 letter?

12:00:51 6 A. Lieutenant Brannigan.

12:00:55 7 Q. Who else?

12:00:56 8 A. Jack Hines, some people from the state's attorney's

12:01:00 9 office.

12:01:00 10 Q. Murphy came as well, didn't he?

12:01:02 11 A. Yes, lieutenant Murphy, yes.

12:01:04 12 Q. And Mr. O'Callaghan, correct?

12:01:05 13 A. Yes.

12:01:06 14 Q. And at that time you discussed the possible of cooperating

12:01:11 15 by testifying against other people, correct?

12:01:13 16 A. Yes.

12:01:13 17 Q. And the first thing you wanted was to get off death row,

12:01:18 18 correct?

12:01:18 19 A. Yes.

12:01:19 20 Q. And they told you if you're going to get off death row,

12:01:22 21 you're going to have to prove yourself very useful to them,

12:01:25 22 correct?

12:01:25 23 A. Pretty much.

12:01:27 24 Q. And then you began a two-year process of negotiations and

12:01:31 25 interviews, correct?

12:01:32 1 A. Yes.

12:01:32 2 Q. You were held at the MCC, the federal building, federal

12:01:36 3 jail?

12:01:36 4 A. Yes, sir.

12:01:36 5 Q. That's right down the street from here, correct?

12:01:38 6 A. Yes, sir.

12:01:39 7 Q. And sometimes you would during this two-year process, you

12:01:43 8 would be at the Dirksen building, this building?

12:01:48 9 A. Yes, sir.

12:01:48 10 Q. During those two years, you would be interacting with Mr.

12:01:51 11 O'Callaghan and Mr. Murphy?

12:01:52 12 A. If that's what you want to call it.

12:01:54 13 Q. Interacting?

12:01:55 14 A. Yeah.

12:01:55 15 Q. You got a better word?

12:01:57 16 A. Yeah, they was investigating me, they were interviewing

12:02:01 17 me.

12:02:01 18 Q. You understood at the time your role was to help them make

12:02:04 19 as many cases as possible against as many people as possible,

12:02:07 20 correct?

12:02:07 21 A. My role was to tell them what I knew about crimes that I

12:02:12 22 was involved in.

12:02:12 23 Q. All right. By their objective, was it not?

12:02:14 24 A. You can ask him them about their objective.

12:02:17 25 Q. I am asking you about your understanding?

12:02:19 1 A. Yes, sir.

12:02:19 2 Q. Did you understand they wanted to make as many cases

12:02:22 3 against as many El Rukns as possible?

12:02:24 4 A. They wouldn'ted from me information that I had.

12:02:31 5 Q. All right. In exchange, you got off death row, right?

12:02:34 6 A. Eventually, yes.

12:02:36 7 Q. And the conditions got considerably better than they were

12:02:39 8 at Menard, correct?

12:02:40 9 A. Yes.

12:02:41 10 Q. They put money in your commissary, right?

12:02:44 11 A. Yes.

12:02:44 12 Q. About \$60 a month?

12:02:47 13 A. Yes.

12:02:47 14 Q. And they bought clothes for your family, correct?

12:02:52 15 A. Bought me clothes, yes, I guess clothes for my family,

12:02:58 16 yes.

12:02:58 17 Q. Do you remember being asked that same question in April

12:03:00 18 2014, this is page 2697, lines 20 through 24. Or 22 through

12:03:07 19 24. Sometimes they bought clothes for your family, correct?

12:03:12 20 "ANSWER: No. Did you give that answer, sir

12:03:14 21 A. Yes.

12:03:14 22 Q. When you were in the federal custody, you got to make long

12:03:18 23 distance calls to your friends and family patched through the

12:03:23 24 U.S. Attorney's Office?

12:03:24 25 A. Yes.

12:03:24 1 Q. That's the kind of thing that's not allowed at Menard,
12:03:27 2 right?
12:03:27 3 A. No.
12:03:28 4 Q. So you had a lot more freedom during those two years than
12:03:33 5 you did at Menard?
12:03:34 6 A. What do you mean freedom.
12:03:35 7 Q. Menard it's 23 hours a day locked in a cell, correct?
12:03:38 8 A. Okay.
12:03:39 9 Q. Once you became a cooperator, your life and living
12:03:43 10 improved substantially, correct?
12:03:46 11 A. It all depends how you look at it. I'm still locked up.
12:03:49 12 Q. You were allowed -- in prison, you weren't allowed to have
12:03:53 13 sex with your girlfriend, correct?
12:03:54 14 A. If you could sneak and do it, yes.
12:04:00 15 Q. How are you going to sneak and have sex at Menard under 23
12:04:00 16 hours a day in a locked cell?
12:04:00 17 A. When you come out, you go into the visiting room, and the
12:04:03 18 officers might leave off to do something, you can sneak and
12:04:07 19 have sex with somebody who was with you.
12:04:09 20 Q. On death row, they let you have sex; that's your
12:04:12 21 testimony?
12:04:12 22 A. They didn't let you. I said you could sneak it.
12:04:18 23 Q. Did you sneak sex on death row, sir?
12:04:20 24 A. No.
12:04:20 25 Q. You sneaked sex once you got in the Dirksen building,

12:04:24 1 didn't you?

12:04:24 2 A. In the MCC, yes.

12:04:27 3 Q. And in this building, didn't you also get opportunities to
12:04:28 4 have sex?

12:04:28 5 MR. KULWIN: Objection, Judge, I'd like to be heard.

12:04:30 6 THE COURT: Okay. Let me see the lawyers at sidebar.

12:04:40 7 (The following proceedings were had at sidebar outside the
12:04:41 8 hearing of the jury:)

12:04:41 9 THE COURT: You got an issue. Let's let Mr. Kulwin
12:04:45 10 talk first.

12:04:45 11 MR. KULWIN: In my view, Mr. Loevy is about to go
12:04:49 12 into all the alleged improprieties in the El Rukn
12:04:52 13 investigation. If he wants to do that, then in my view I am
12:04:53 14 entitled to go into all the indictments and all the
12:04:55 15 convictions and how all those convictions were confirmed and
12:04:58 16 affirmed and all that was thrown out. Because -- first of
12:05:04 17 all, there was no sex. I know that case inside out and
12:05:07 18 backwards. He didn't get any sex in the U.S. Attorney's
12:05:10 19 Office. He didn't.

12:05:12 20 THE COURT: It was phone sex, right? Whatever he got
12:05:15 21 was phone sex?

12:05:15 22 MR. LOEVY: No, he was allowed to have sex with his
12:05:17 23 girlfriend. In U.S. v. Boyd he said it and at the criminal
12:05:21 24 trial, he said it.

12:05:22 25 In response to his prior concern, I'm asking what

12:05:25 1 benefits did you get to cooperate. I don't see any doors
12:05:27 2 being opened and --

12:05:29 3 THE COURT: Let me -- I'm sorry. I'm looking at your
12:05:33 4 notes here. He testified in the criminal trial in 2009.

12:05:35 5 MR. LOEVY: 7616.

12:05:38 6 THE COURT: Let me just look at that.

12:05:39 7 MR. LOEVY: Sure.

12:05:44 8 THE COURT: Well, see your girlfriend in the office
12:05:46 9 is different from having sex with her.

12:05:48 10 MR. LOEVY: But here is the Boyd testimony.

12:05:51 11 THE COURT: Hang on a second.

12:05:53 12 MR. LOEVY: The Boyd testimony --

12:05:54 13 THE COURT: Hang on a second. This is from page 76
12:05:57 14 of I don't know what.

12:05:58 15 MR. LOEVY: The criminal trial.

12:05:59 16 THE COURT: Okay. Another perk you got, you had sex
12:06:01 17 with your girlfriend in the Everett Dirksen building?

12:06:07 18 "ANSWER: Yes, ma'am.

12:06:07 19 "QUESTION: You were taken from the MCC?

12:06:07 20 "ANSWER: Yes, ma'am.

12:06:07 21 "QUESTION: You were allowed to see your girlfriend in
12:06:09 22 an office?

12:06:10 23 "ANSWER: Yes, ma'am.

12:06:11 24 "QUESTION: In the Dirksen building?

12:06:12 25 "ANSWER: Yes, ma'am."

12:06:13 1 That came out at the 2009 trial?

12:06:15 2 MR. LOEVY: Yes.

12:06:16 3 THE COURT: The theory on which that opens up all the
12:06:18 4 El Rukn prosecutions is what?

12:06:20 5 MR. KULWIN: In my view, if he can impeach him with
12:06:23 6 that, we should be able to say the jury has heard all of that
12:06:26 7 and -- the whole theory behind impeaching him is to say that
12:06:32 8 with this jury he is non-credible. If he is non-credible.

12:06:36 9 THE COURT: Is there any mystery about the fact that
12:06:39 10 -- this was in 2009?

12:06:41 11 MR. LOEVY: Right.

12:06:42 12 THE COURT: What was the trial at which Mr. Fields
12:06:44 13 was convicted after this testimony was given pray tell?

12:06:47 14 MR. KULWIN: It was before this.

12:06:49 15 THE COURT: This is testimony from a 2009 trial which
12:06:51 16 is by definition admissible in this case. That's what I am
12:06:54 17 being told. That was testimony from the 2009 trial. What am
12:06:58 18 I missing? You need to tell me what I am missing. Hang on.
12:07:02 19 You need to tell me what I am missing. Is there anything? I
12:07:05 20 want an answer. I am going to sit here until hell freezes
12:07:09 21 over until I get an answer. Am I missing anything?

12:07:12 22 MR. KULWIN: I don't believe you are missing
12:07:13 23 anything.

12:07:13 24 THE COURT: So what's the theory on which this opens
12:07:15 25 up the door to what federal courts found ten years later or

12:07:17 1 five years later or five years before? What's the theory?

12:07:23 2 Yes or no?

12:07:23 3 MR. KULWIN: My theory is that he was having sex as
12:07:25 4 part of a cooperator in the El Rukn investigation, and in my
12:07:29 5 view, and you may disagree, but in my view, it opens the door
12:07:33 6 to, okay, you cooperated with the federal government,
12:07:37 7 allegedly had sex, 29 people were convicted.

12:07:39 8 THE COURT: Okay. So the theory of relevance -- you
12:07:42 9 are going to have to articulate it, Mr. Kulwin. It's not good
12:07:46 10 enough. Right now you have not preserved the point. If you
12:07:49 11 want to preserve the point, you are going to have to
12:07:51 12 articulate it.

12:07:52 13 The 29 people, none of whom are Mr. Fields, got
12:07:55 14 convicted, so the theory on which that's relevant in this
12:07:57 15 trial is what exactly?

12:07:58 16 MR. KULWIN: It's relevant to show -- it
12:08:00 17 rehabilitates his credibility. All that rehabilitates it and
12:08:07 18 therefore it's admissible.

12:08:08 19 THE COURT: Okay. Classic 403. It doesn't.
12:08:11 20 However, you get to ask about the 2009 trial and not about the
12:08:14 21 Boyd testimony.

12:08:14 22 MR. LOEVY: Got it.

12:08:16 23 THE COURT: Got it?

12:08:16 24 MR. LOEVY: And as long as we are at sidebar, we
12:08:19 25 should raise something else. He was cross-examined at the

12:08:22 1 criminal trial by Ms. Con years about the fact that he
12:08:24 2 testified in nine different federal trials, RICO trials. That
12:08:28 3 was part of the trial. I am going to elicit what's part of
12:08:30 4 the trial. He gave the same story each time about the
12:08:32 5 Smith/Hickman scenario. He was called on to do it and he did
12:08:35 6 it.

12:08:36 7 THE COURT: You're bringing out the fact that he
12:08:38 8 testified about this in nine other criminal trials?

12:08:40 9 MR. LOEVY: It was brought out at the criminal trial.

12:08:42 10 THE COURT: Hell freezes over, Mr. Loevy. I want
12:08:45 11 direct answers to questions because I'm sitting here wasting
12:08:48 12 the jury's time right now.

12:08:49 13 MR. LOEVY: The answer is yes.

12:08:50 14 THE COURT: You are bringing out -- how are you going
12:08:52 15 to bring it out? I want to hear it right now so I can save
12:08:55 16 the sidebar.

12:08:55 17 MR. LOEVY: At the criminal trial --

12:08:56 18 THE COURT: Go get your notes so we can go over it
12:09:00 19 quickly.

12:09:14 20 MR. LOEVY: There is some chance, your Honor, that
12:09:20 21 this would not come up before the lunch break.

12:09:23 22 THE COURT: That's fine. I want to talk about it.
12:09:26 23 We are here. An argument that it's related. Okay. If it's
12:09:57 24 that far down, you are not getting to it before lunch. We
12:10:06 25 will talk about it at the break.

12:10:08 1 (The following proceedings were had in open court in the
12:10:08 2 presence and hearing of the jury:)

12:10:08 3 THE COURT: Okay. You can proceed.

12:10:10 4 BY MR. LOEVY:

12:10:12 5 Q. When you were a cooperator, you were given the perk of
12:10:16 6 being permitted to have sex with your girlfriend, correct?

12:10:19 7 THE COURT: I told you the way that you were going to
12:10:21 8 do this, Mr. Loevy. So let's do it.

12:10:23 9 BY MR. LOEVY:

12:10:27 10 Q. Isn't it true you were asked the following questions and
12:10:29 11 the following answers at Mr. Fields' criminal trial.

12:10:33 12 THE COURT: Thank you.

12:10:33 13 BY MR. LOEVY:

12:10:34 14 Q. Page 74, lines 12 -- no. It's page 76.

12:10:41 15 THE COURT: Let's get everything off of there except
12:10:42 16 the single page that you were going to put up that you showed
12:10:45 17 me at sidebar.

12:10:46 18 MR. LOEVY: I found it, your Honor.

12:10:47 19 THE COURT: Okay page 76 from the 2009 trial. Okay.
12:10:52 20 Go ahead.

12:10:52 21 BY MR. LOEVY:

12:10:53 22 Q. All right. Line 10. Let's move on to something else.

12:10:57 23 Another perk you got, you had sex with your girlfriend in the
12:11:00 24 he have Everett Dirksen building?

12:11:02 25 "ANSWER: Yes, ma'am.

12:11:03 1 "QUESTION: You were taken from the MCC, right?

12:11:05 2 "ANSWER: Yes, ma'am.

12:11:06 3 "QUESTION: You were allowed to see your girlfriend in

12:11:08 4 an office?

12:11:09 5 "ANSWER: Yes, ma'am.

12:11:10 6 "QUESTION: In the Dirksen building?

12:11:11 7 "ANSWER: Yes, ma'am."

12:11:13 8 Did you give those answers at the criminal trial?

12:11:15 9 A. Yes.

12:11:15 10 Q. Were they true?

12:11:16 11 A. I didn't have sex in the Dirksen building with any

12:11:24 12 girlfriend. It was the MCC.

12:11:26 13 Q. This is the Dirksen building?

12:11:27 14 A. At the MCC.

12:11:28 15 Q. I asked you if this is the Dirksen building?

12:11:31 16 THE COURT: I will take judicial notice that this is

12:11:33 17 the Dirksen building.

12:11:36 18 BY MR. LOEVY:

12:11:36 19 Q. You also struck up with a relationship with a female

12:11:38 20 paralegal for the government, correct?

12:11:40 21 A. Yes.

12:11:40 22 Q. And that was a perk that was not available on death row,

12:11:43 23 correct?

12:11:44 24 A. Yes.

12:11:45 25 Q. And all things considered, the agreement to testify

12:11:53 1 against others worked out pretty good for you, did it not?

12:11:56 2 MR. BURNS: Objection, your Honor?

12:11:57 3 THE WITNESS: Yes.

12:11:58 4 THE COURT: Overruled.

12:11:58 5 BY MR. LOEVY:

12:11:59 6 Q. You were involved in quite a few murders?

12:12:01 7 A. Yes.

12:12:02 8 Q. And you did not get sentenced to life in prison, did you?

12:12:05 9 A. No, sir.

12:12:06 10 Q. In fact, you're free today, aren't you?

12:12:09 11 A. Yes, sir.

12:12:09 12 Q. Now, pursuant to your plea deal, original plea deal, you

12:12:13 13 got 42 years on each of two counts in the state case, correct?

12:12:18 14 A. Yes, sir.

12:12:18 15 Q. I am talking about the original plea deal when you agreed

12:12:21 16 to testify against El Rukns, that was your original sentence,

12:12:23 17 right?

12:12:23 18 A. When I first found out?

12:12:32 19 Q. You became a cooperator in exchange for which you got a

12:12:36 20 plea deal, right?

12:12:37 21 A. Yes, sir.

12:12:38 22 Q. In that plea deal, that was what I'll call the original

12:12:41 23 plea deal, okay, do you understand what I mean?

12:12:44 24 THE COURT: In other words, on day one?

12:12:46 25 BY MR. LOEVY:

12:12:46 1 Q. On day one?

12:12:47 2 MR. BURNS: Judge, vague, foundation would probably

12:12:50 3 help on this matter?

12:12:51 4 THE COURT: Dates you mean?

12:12:52 5 MR. BURNS: Dates and keeping perspective.

12:12:54 6 THE COURT: Dates.

12:12:55 7 BY MR. LOEVY:

12:12:55 8 Q. When was your original plea deal?

12:12:57 9 A. You keep on saying 42 years. I got 60 years. That's what

12:13:02 10 I am trying to get you.

12:13:03 11 Q. You got 60 years on the federal case?

12:13:06 12 A. Okay.

12:13:06 13 Q. Right?

12:13:06 14 A. Yes, sir.

12:13:07 15 Q. And your original deal was 60 years on the federal and 8

12:13:10 16 four years on the state, correct?

12:13:11 17 A. 42 years, yes.

12:13:13 18 Q. 42 years on each of two counts, right?

12:13:18 19 A. Each of two counts?

12:13:20 20 Q. That's the question?

12:13:21 21 A. There's two counts and I got 42 years on both of them is

12:13:25 22 that what you say.

12:13:26 23 Q. For a total of '84 years?

12:13:28 24 A. I didn't total it 8 four years. You can total it up.

12:13:31 25 Q. This is your testimony from the criminal trial, Mr.

12:13:35 1 Fields' criminal trial. This is page 6, lines 7 through 11.

12:13:39 2 Do you remember being asked this question: You understand that

12:13:42 3 each sentence of 42 years in the Illinois Department of

12:13:45 4 Corrections will be consecutive to each other for a total of

12:13:48 5 '84 years in the Illinois Department of Corrections?

12:13:51 6 "ANSWER: Yes, sir."

12:13:52 7 Did you give that testimony

12:13:53 8 A. Yes, sir.

12:13:54 9 Q. Was it true?

12:13:55 10 A. Basically, yes.

12:13:57 11 Q. Now, at some point after you testified in these RICO

12:14:06 12 trials, you came to believe that the deal was bad for you,

12:14:09 13 correct?

12:14:09 14 A. Yes, sir.

12:14:11 15 Q. And you didn't want to stay in prison for that long, did

12:14:15 16 you?

12:14:15 17 A. No, sir.

12:14:17 18 Q. So you filed a motion to vacate your guilty plea, correct?

12:14:20 19 A. Yes, sir.

12:14:21 20 Q. And the basis of the motion is that you had been promised

12:14:24 21 you would do less time than what was in the written agreement,

12:14:27 22 correct?

12:14:27 23 A. Yes, sir.

12:14:28 24 Q. And your point in this motion to vacate was you'd been

12:14:33 25 given a side deal that you were only supposed to get 20 years

12:14:36 1 notwithstanding what it said in the paper, correct?

12:14:38 2 A. Not a side deal.

12:14:41 3 Q. Well, it was a deal?

12:14:42 4 A. That's my understanding from the front.

12:14:45 5 Q. Right. But it wasn't in the paper?

12:14:46 6 A. That was my understanding from the front is that what we

12:14:51 7 going to get for murder, they said 35 to 20 years.

12:14:54 8 Q. All right. Let me just -- so I understand.

12:14:58 9 The paper said you're doing 8 four years, right, the

12:15:00 10 written thing you signed?

12:15:01 11 A. 42 years, yes.

12:15:02 12 Q. Consecutive twice, right?

12:15:05 13 A. Yes.

12:15:05 14 Q. All right. And you said, well, you guys had an

12:15:07 15 understanding with me that I was only supposed to do 20, that

12:15:10 16 was the basis of your motion to vacate the plea, right?

12:15:13 17 A. Yes, sir.

12:15:14 18 MR. BURNS: Objection, your Honor, foundation.

12:15:16 19 THE COURT: Overruled.

12:15:17 20 BY MR. LOEVY:

12:15:19 21 Q. And had there been a side agreement that was not reflected

12:15:21 22 in the written agreements --

12:15:23 23 THE COURT: Why don't you take the word side of this

12:15:26 24 since it caused an issue before.

12:15:27 25 BY MR. LOEVY:

12:15:28 1 Q. Had there been an oral understanding that you were only
12:15:31 2 going to do 20 years, not the 84?

12:15:34 3 A. That was my understanding.

12:15:35 4 Q. All right. And when you testified at various trials, you
12:15:38 5 were able to stand there and said look I'm in there for 8 four
12:15:42 6 years, I'm credible, right?

12:15:44 7 MR. BURNS: Objection to the form.

12:15:47 8 THE COURT: Sustained.

12:15:48 9 BY MR. LOEVY:

12:15:48 10 Q. It made you a more credible witness?

12:15:50 11 MR. KULWIN: Objection, argumentative.

12:15:52 12 THE COURT: Sustained.

12:15:53 13 BY MR. LOEVY:

12:15:57 14 Q. All right. You also were cross-examined at Mr. Fields'
12:15:59 15 criminal trial that you wrote in your motion to vacate that
12:16:02 16 Mr. Hogan, the government lawyer you were working with had
12:16:05 17 threatened you, correct?

12:16:06 18 A. Yes, okay.

12:16:08 19 Q. Okay. What was the government's threat?

12:16:10 20 A. You cooperate or you go back to where you was at.

12:16:14 21 Q. And that's when you started raising concerns about
12:16:17 22 cooperating, correct?

12:16:18 23 A. Yes.

12:16:19 24 Q. And they told you we're going to send your butt right back
12:16:22 25 to death row, you can fend for yourself, right?

12:16:26 1 A. Yes.

12:16:26 2 Q. Now, to get your plea deal and avoid the death penalty,
12:16:33 3 you had to deliver a lot for your end of the bargain, correct?

12:16:36 4 A. Pretty much.

12:16:43 5 MR. LOEVY: Your Honor, this is the point where we
12:16:45 6 said we were going to skip. Let me move ahead.

12:16:48 7 THE COURT: Okay. Actually, no, let's talk about
12:16:52 8 this at sidebar now. You found what you were looking for?

12:16:55 9 MR. LOEVY: I found what I was looking for.

12:17:03 10 (The following proceedings were had at sidebar outside the
12:17:05 11 hearing of the jury:)

12:17:05 12 MR. LOEVY: Should I do a proffer, your Honor?

12:17:06 13 THE COURT: Go ahead.

12:17:07 14 MR. LOEVY: All right. He had to testify against a
12:17:09 15 lot of guys, he ended up testifying at 10 civil El Rukn
12:17:13 16 trials, this is testimony from the criminal trial.

12:17:14 17 THE COURT: Okay.

12:17:15 18 MR. LOEVY: And one of the men was Fields.

12:17:17 19 THE COURT: One of which men was Fields?

12:17:19 20 MR. LOEVY: One of the ten men he testified against.

12:17:21 21 THE COURT: That's not exactly -- yeah, you're going
12:17:24 22 to have to word that more carefully. He can't just kind of go
12:17:27 23 flipping around unless you want to put in incorrectly that
12:17:31 24 your guy was a defendant in a federal case.

12:17:33 25 MR. LOEVY: All right. We will be careful about

12:17:36 1 that. Focus on the period before you became a cooperator,
12:17:41 2 this is when you went out to the sixth floor. I guess that's
12:17:44 3 what I'm asking right there.

12:17:45 4 THE COURT: He testified in ten RICO trials, whatever
12:17:48 5 the number was.

12:17:48 6 MR. LOEVY: And that he had this opportunity
12:17:50 7 beforehand to hangout with the other witnesses, clay, hunter,
12:17:54 8 Kees.

12:17:55 9 MR. KULWIN: My point is that opens the door to what
12:17:58 10 happened at the RICO trials.

12:17:58 11 THE COURT: You want to put in and the defendants
12:18:00 12 were found guilty in the RICO trials.

12:18:02 13 MR. KULWIN: Absolutely.

12:18:02 14 THE COURT: Is there any problem with that?
12:18:04 15 Honestly, I am not so sure it didn't go in at the last trial.
12:18:10 16 I am looking at Mr. Noland who I can see is doing a mental
12:18:13 17 inventory here.

12:18:14 18 MR. NOLAND: Honestly, Judge, I don't recall.

12:18:16 19 MR. LOEVY: I don't think what I just said opens the
12:18:18 20 door to what happens at the trial.

12:18:19 21 THE COURT: I will let you put in that the defendants
12:18:22 22 got convicted at those trials, but that's it. We are not
12:18:24 23 going -- this is not going to be -- and there was another
12:18:29 24 trial.

12:18:29 25 MR. KULWIN: I understand.

12:18:30 1 THE COURT: It's one question.

12:18:32 2 MR. KULWIN: Jury trials and they were convicted.

12:18:34 3 THE COURT: No, they were convicted at trials. Okay?

12:18:38 4 You are not -- I mean, because I know what you want to do with

12:18:42 5 this. What you want to do is that ten juries believed the

12:18:45 6 guy.

12:18:46 7 MR. KULWIN: No.

12:18:46 8 THE COURT: Yeah, you do.

12:18:47 9 MR. KULWIN: That's a danger, but that's not what I

12:18:50 10 want to do.

12:18:50 11 THE COURT: Just so I am being clear, you are not

12:18:52 12 going to be able to make that argument.

12:18:54 13 MR. KULWIN: I am not. What I want to be able to do

12:18:59 14 is you got this great deal to make stuff up.

12:19:02 15 THE COURT: That was.

12:19:07 16 MR. KULWIN: To make stuff up and, you know, so here

12:19:13 17 they should be able to hear that they were jury trials, you

12:19:16 18 were cross-examined and they were convicted.

12:19:18 19 MR. LOEVY: I thought he said that's what he wouldn't

12:19:20 20 do.

12:19:21 21 THE COURT: You have to leave the jury out of it.

12:19:23 22 You were cross-examined at those trials and the people were

12:19:25 23 convicted. Was anybody convicted? Has anybody gotten off? I

12:19:29 24 don't know.

12:19:30 25 MR. LOEVY: Actually, that's not true. George Carter

12:19:32 1 was acquitted. He was acquitted.

12:19:36 2 MR. NOLAND: He was convicted of RICO conspiracy.

12:19:38 3 The conviction was vacated and conspiracy to commit murders.

12:19:43 4 The conviction was vacated.

12:19:46 5 THE COURT: I am worry about that later.

12:19:48 6 (The following proceedings were had in open court in the
12:19:52 7 presence and hearing of the jury:)

12:19:52 8 THE COURT: Okay. You can proceed. We are going to
12:19:54 9 break for lunch at 12:30, by the way.

12:19:56 10 BY MR. LOEVY:

12:19:57 11 Q. All right. To get your plea deal and avoid the death
12:20:03 12 penalty, you had to deliver a lot on your end of the bargain?

12:20:06 13 A. Pretty much.

12:20:07 14 Q. You had to testify against a lot of guys and help them
12:20:09 15 make a lot of cases, right?

12:20:10 16 A. Pretty much.

12:20:11 17 Q. You ended up testifying at like 10 federal trials,
12:20:14 18 correct?

12:20:14 19 A. Yes.

12:20:14 20 Q. And later, as part of a different deal, you also testified
12:20:18 21 against Mr. Fields, correct?

12:20:19 22 A. Okay.

12:20:23 23 Q. All right. Let's focus on the time period after you
12:20:26 24 agreed to become a cooperator. When they moved you to the
12:20:31 25 MCC, you were based there for a few years. We covered that,

12:20:33 1 correct?

12:20:33 2 A. Yes.

12:20:35 3 Q. That was on the sixth floor, right?

12:20:37 4 A. Yes, sir.

12:20:38 5 Q. You were housed with the other cooperators, correct?

12:20:40 6 A. Yes, sir.

12:20:41 7 Q. Derrick Kees, right?

12:20:42 8 A. Yes, sir.

12:20:43 9 Q. Eugene hunter?

12:20:44 10 A. Yes, sir.

12:20:44 11 Q. Jackie Clay?

12:20:45 12 A. Yes, sir.

12:20:46 13 Q. And trammel Davis?

12:20:48 14 A. No, sir.

12:20:48 15 Q. He was not there?

12:20:49 16 A. Trammel? I might stand corrected. I don't know.

12:20:54 17 A. That was a question?

12:20:56 18 Q. Yes. Was trammel Davis there?

12:20:58 19 A. No, sir.

12:20:59 20 Q. It was clay, hunter, Kees, and you?

12:21:02 21 THE COURT: Is that right?

12:21:02 22 THE WITNESS: Yes, sir.

12:21:03 23 BY MR. LOEVY:

12:21:04 24 Q. All right. And clay, hunter, Kees, those three guys, they

12:21:09 25 were also making deals to cut their time in exchange for

12:21:11 1 testifying against other El Rukns, correct?

12:21:12 2 A. Yes, sir.

12:21:13 3 Q. And there was absolutely nothing to stop the four of you
12:21:17 4 from comparing notes and getting your stories reconciled,
12:21:23 5 correct?

12:21:23 6 A. Other than not trusting each other, I guess not.

12:21:26 7 Q. In other words, you were free to collaborate without the
12:21:29 8 law present, correct?

12:21:30 9 A. We would be out sometimes for recreation at the same time,
12:21:34 10 yes, sir.

12:21:34 11 Q. And they had the same objective you did, correct?

12:21:37 12 A. I don't know what objective they had.

12:21:39 13 Q. Their objective was to prove as useful as possible to law
12:21:42 14 enforcement?

12:21:42 15 A. You ask them that then.

12:21:46 16 Q. Was that your objective?

12:21:48 17 A. Yes, sir.

12:21:48 18 MR. BURNS: Objection, argumentative.

12:21:51 19 THE COURT: Asking him that question is not
12:21:53 20 argumentative. The objection is overruled and the answer can
12:21:56 21 stand.

12:21:56 22 BY MR. LOEVY:

12:21:56 23 Q. At some point you all got access to the prosecutor's
12:21:59 24 memos, correct?

12:22:00 25 A. Who is you all?

12:22:01 1 Q. Let's start with you. You got access?

12:22:03 2 A. To what?

12:22:04 3 Q. The prosecutors' memos that laid out the theory of the

12:22:08 4 cases?

12:22:08 5 A. No, sir, I don't remember that.

12:22:09 6 Q. You got them from Eugene hunter?

12:22:11 7 A. I don't remember that.

12:22:12 8 Q. You got them from Derrick Kees?

12:22:14 9 A. I just told you I don't remember.

12:22:16 10 Q. And Kees got them from Hogan's office?

12:22:19 11 A. I just told you I don't remember that.

12:22:20 12 Q. Do you remember testifying in the United States v. Boyd

12:22:24 13 case, this is June 22nd, 1993 at page 648. This is your

12:22:31 14 testimony. This is 1993. What was said by each persons

12:22:37 15 present on the subject of this document?

12:22:39 16 "ANSWER: To the best of my recollection, Eugene,

12:22:42 17 that's Eugene hunter, right

12:22:44 18 A. Yes, sir.

12:22:44 19 Q. Was telling Jackie Clay they got some papers out of

12:22:48 20 Hogan's office, Hogan was the U.S. Attorney's Office, right?

12:22:50 21 A. Yes, sir.

12:22:51 22 Q. He was just telling you that he was relating that to

12:22:53 23 Jackie Clay and I overheard him. I think he was maybe in the

12:22:56 24 law library or the record room or something like that?

12:22:59 25 A. Yes, sir.

12:23:00 1 Q. Do you remember anything else that was said on the subject
12:23:02 2 on that occasion?

12:23:03 3 "ANSWER: No.

12:23:04 4 "QUESTION: Do you have any other information
12:23:05 5 concerning that document?

12:23:06 6 "ANSWER: Then Ricky Kees told me that he had got it.

12:23:11 7 "QUESTION: Ricky told you that he got it from Hogan's
12:23:14 8 office?

12:23:15 9 "ANSWER: He got it from Hogan's office. I had told
12:23:15 10 Eugene and Jackie got some paper out of Hogan's office.

12:23:18 11 Do you remember those answers, sir?

12:23:20 12 A. Yes, sir.

12:23:21 13 Q. And what you were talking about was documents that
12:23:23 14 belonged to the prosecutor, correct?

12:23:24 15 A. Yes, sir.

12:23:28 16 Q. And those documents laid out the facts of the cases that
12:23:32 17 you were going to testify in, correct?

12:23:34 18 A. I don't know what they laid out. They were some papers
12:23:38 19 from Hogan's office.

12:23:39 20 Q. How did you as a prisoner get your hands-on the
12:23:42 21 prosecutor's papers?

12:23:43 22 A. For the first time, I told you I did not have it. I told
12:23:47 23 you I heard them, I overheard them talking about they had
12:23:52 24 them. I didn't have them, sir.

12:23:55 25 Q. Let's change topics.

12:23:57 1 You -- during this two year process, the idea was to
12:24:02 2 create a grand jury statement, correct?

12:24:04 3 A. Yes, sir.

12:24:08 4 Q.

12:24:09 5 MR. LOEVY: Actually, I am going to save that topic
12:24:11 6 since we only have six minutes. Let me ask you a few more
12:24:15 7 questions.

12:24:15 8 BY MR. LOEVY:

12:24:15 9 Q. You made a series of plea deals over time, correct?

12:24:18 10 A. Yes, sir.

12:24:19 11 Q. They kept cutting your time and cutting your time and
12:24:21 12 cutting your time?

12:24:22 13 MR. KULWIN: Objection, lack of foundation.

12:24:24 14 THE COURT: Sustained to the form of the question.

12:24:25 15 BY MR. LOEVY:

12:24:26 16 Q. All right. Your time -- you're free now, right?

12:24:29 17 A. Yes, sir.

12:24:29 18 Q. And that's the result of multiple deals you made with the
12:24:32 19 government, correct?

12:24:33 20 A. Yes, sir.

12:24:33 21 Q. And in 2009, you made a deal to testify against Nate
12:24:43 22 Fields if they cut your time even further, right?

12:24:45 23 A. Made a deal to testify about Smith and Hickman and he was
12:24:55 24 involved. Directly him, yes.

12:24:56 25 Q. But you weren't quite free yet?

12:24:58 1 A. I wasn't free at all. You free or you ain't.

12:25:01 2 Q. They cut your time, didn't they?

12:25:03 3 A. Okay, but you ain't free.

12:25:05 4 Q. The question was did they cut your time?

12:25:08 5 A. No, that wasn't your question. Your question was I free.

12:25:12 6 THE COURT: Put another question, please.

12:25:13 7 BY MR. LOEVY:

12:25:14 8 Q. Then in April 2014, they wanted you to testify against Mr.

12:25:18 9 Fields again, right?

12:25:18 10 A. They wanted me to testify in court proceedings, yes.

12:25:22 11 Q. All right. And you weren't going to do it without getting

12:25:24 12 something back, were you?

12:25:25 13 A. Mostly they were already intact.

12:25:29 14 Q. You weren't going to do without getting something back?

12:25:34 15 MR. BURNS: Objection.

12:25:35 16 THE COURT: Overruled. The answer is nonresponsive.

12:25:37 17 Put the question again, please.

12:25:38 18 BY MR. LOEVY:

12:25:39 19 Q. You weren't going to do it unless you got some benefit,

12:25:41 20 were you?

12:25:42 21 MR. BURNS: Objection, your Honor.

12:25:43 22 THE COURT: Overruled.

12:25:43 23 THE WITNESS: So what you asking me?

12:25:48 24 BY MR. LOEVY:

12:25:50 25 Q. In April 2014 when the defendants wanted to call you to

12:25:53 1 testify at a hearing in Nate's case, you told them you weren't
12:25:57 2 going to do it unless there was something in it for you,
12:25:59 3 correct?

12:26:00 4 A. Pretty much.

12:26:01 5 Q. What would they put in if for you?

12:26:05 6 A. I told you I did a deal in 2009 and 2014, I think they
12:26:11 7 said they might take a couple years off.

12:26:14 8 Q. You were freed later that year, weren't you, sir?

12:26:17 9 A. Yes, I got freed later that year.

12:26:19 10 Q. That's because they wrote letters on your behalf, didn't
12:26:22 11 they?

12:26:22 12 MR. BURNS: Objection, your Honor.

12:26:23 13 THE COURT: Sustained to the form of the question.

12:26:25 14 BY MR. LOEVY:

12:26:26 15 Q. They wrote letters on your behalf saying that you should
12:26:28 16 be free, didn't they?

12:26:30 17 THE COURT: Let's define the they.

12:26:31 18 BY MR. LOEVY:

12:26:32 19 Q. Mr. O'Callaghan and Mr. Murphy after you testified in
12:26:34 20 April 2014 wrote letters asking the parole board to free you,
12:26:38 21 didn't they?

12:26:39 22 MR. BURNS: Objection, your Honor.

12:26:40 23 THE COURT: Overruled.

12:26:40 24 THE WITNESS: Yeah, they gave that, but that ain't
12:26:47 25 the reason I got free.

12:26:48 1 MR. LOEVY: Your Honor.

12:26:49 2 THE COURT: The last part of the answer is stricken
12:26:50 3 as nonresponsive. The jury is directed to disregard it.

12:26:53 4 BY MR. LOEVY:

12:26:53 5 Q. You were free inside the year, weren't you? You were free
12:26:57 6 in 2014, weren't you?

12:27:00 7 A. Yes, that's when I was released.

12:27:01 8 Q. Were you appreciative that they wrote those letters for
12:27:04 9 you?

12:27:04 10 A. As I told you, I tried to tell you before, they letters
12:27:09 11 they didn't have anything to do with.

12:27:10 12 THE COURT: The answer is stricken. The jury is
12:27:14 13 directed to disregard it. We are going to break for lunch. I
12:27:19 14 have very short cases at 1:30, maybe 5, 10 minutes. Be ready
12:27:26 15 to go at 1:35.

12:27:56 16 (The jury leaves the courtroom.).

12:27:56 17 THE COURT: So I just want to make clear to the
12:27:58 18 witness the last two rulings I made. So you're not in a
12:28:03 19 position to testify from personal knowledge about why the
12:28:05 20 parole board let you out. That's why I struck those answers.
12:28:09 21 Just listen.

12:28:09 22 THE WITNESS: I didn't say anything.

12:28:10 23 THE COURT: Yeah, well, you were about to. So you're
12:28:13 24 not to give that testimony again. I have excluded it.

12:28:16 25 There's been prior discussion about it. And I have excluded

12:28:18 1 it from both sides, testimony about why the parole board did
12:28:22 2 what they did. So that's why I have excluded it. Do you
12:28:25 3 understand what I'm telling you?

12:28:26 4 THE WITNESS: What you are saying I have to say?

12:28:28 5 THE COURT: Nobody is going to ask you a question
12:28:30 6 that calls for you to say why the parole board let you out
12:28:33 7 because why the parole board did something just like you said
12:28:37 8 when somebody was asking what Mr. Kees's motivation is, you
12:28:41 9 don't know what the parole board's motivation is from my
12:28:44 10 personal knowledge that you have so it's not proper testimony
12:28:46 11 so you have now volunteered it twice. I have struck it both
12:28:49 12 times. I have expecting you not to volunteer it again.

12:28:53 13 THE WITNESS: When did I volunteer it, sir?

12:28:55 14 THE COURT: The last two answers. Some day you will
12:28:57 15 see the transcript and you will find out. You may not discuss
12:29:00 16 your testimony with anyone over the break. Do you understand
12:29:01 17 that?

12:29:02 18 THE WITNESS: Yes, sir.

12:29:02 19 THE COURT: Okay. So what issues, if any, do we have
12:29:13 20 to take up?

12:29:14 21 MR. LOEVY: There is the issue of the intimidation,
12:29:16 22 your Honor. This would be a good time to talk about it if
12:29:19 23 it's okay with you or whenever you want to talk about it. We
12:29:24 24 should resolve it.

12:29:25 25 THE COURT: I thought it sort of came up that -- I

12:29:29 1 mean, I have made it clear more times than a human being can
12:29:33 2 count at this point that if something came out at the 1986 or
12:29:39 3 2009 trial it was. Defendants were not going to introduce
12:29:48 4 anything through Mr. Hawkins about any intimidation of
12:29:51 5 witnesses so that kind of closed out that issue for this
12:29:53 6 witness. Is there something that I missed?

12:29:55 7 MR. LOEVY: No, not for this witness. But we still
12:29:57 8 want to be heard on the last witness O'Callaghan.

12:30:00 9 THE COURT: We will do that at some other point. We
12:30:03 10 will do it at the end of the day.

12:30:04 11 MR. LOEVY: That's fine.

12:30:05 12 MR. KULWIN: Judge, for fear of antagonizing you, I
12:30:08 13 am not familiar with the ruling that Mr. Hawkins can't say his
12:30:15 14 understanding.

12:30:16 15 THE COURT: Yeah, I'll tell you what it is. It's
12:30:18 16 called the hearsay rule. His understanding comes from
12:30:22 17 something that somebody else told him.

12:30:25 18 MR. KULWIN: Right.

12:30:25 19 THE COURT: That's called hearsay.

12:30:27 20 MR. KULWIN: Right.

12:30:28 21 THE COURT: There is no basis for him to testify
12:30:29 22 about it.

12:30:30 23 MR. KULWIN: Well, two points, Judge. If he knows
12:30:33 24 from his own calculation, which is what he knows.

12:30:36 25 THE COURT: That's not what he was saying. He was

12:30:38 1 saying that's not why they let me out. I'll quote to you what
12:30:41 2 he said twice. Those letters didn't have anything -- okay.
12:30:48 3 So the question was Mr. O'Callaghan and Mr. Murphy after you
12:30:51 4 testified in April 2014 wrote letters asking the parole board
12:30:56 5 to free you didn't they? Objection by Mr. Burns. Overruled.

12:30:59 6 "ANSWER: Yeah, they gave that but that ain't the
12:31:01 7 reason I got free. Question further down the page, were you
12:31:07 8 appreciative that they wrote those letters for you?

12:31:09 9 "ANSWER: As I told you, as I tried to tell you before,
12:31:12 10 they letters didn't have anything to do with. Okay. That is
12:31:15 11 testimony about why someone else did something which he cannot
12:31:19 12 give

12:31:19 13 MR. KULWIN: What he'll testify to, Judge, I
12:31:21 14 anticipate, although I haven't talked to him and I don't know
12:31:23 15 is he knows the guidelines inside and out, he knows when he
12:31:28 16 was eligible for parole, he knows that was his out date and
12:31:30 17 that's why he got out, not because of what the parole board
12:31:33 18 thought or didn't think. By his calculation he was going to
12:31:36 19 get out either way, number one.

12:31:38 20 THE COURT: I don't know perhaps you didn't hear what
12:31:40 21 I said . He was -- the testimony he gave, the thrust of it
12:31:43 22 was to say why the parole board did what they did. I am not
12:31:47 23 saying that the question -- what did you understand your out
12:31:50 24 date to be, of course he can testify to that just like Mr.
12:31:54 25 Fields could have testified adds to what he understood his out

12:31:57 1 date was going to be if he got a particular sentence. Okay?

12:32:00 2 He can't testify about why the parole board acted as it did.

12:32:03 3 MR. KULWIN: But here's the problem. I understand
12:32:05 4 the problem. Now.

12:32:07 5 THE COURT: We did have a discussion about this by
12:32:09 6 the way. I have read it recently. We talked some months ago
12:32:11 7 about, you know, the possibility of somebody calling somebody
12:32:14 8 from the parole board to testify about why they did what they
12:32:17 9 did.

12:32:17 10 MR. KULWIN: And that's still up in the air.

12:32:19 11 THE COURT: I understand. But that's the person who
12:32:21 12 knows.

12:32:21 13 MR. KULWIN: Right. But here's the thing, Judge.
12:32:25 14 Mr. Loevy has now told the jury that the reason the parole
12:32:29 15 board let him out.

12:32:30 16 THE COURT: He did not tell the jury that. What was
12:32:33 17 the question?

12:32:34 18 MR. KULWIN: The question was those letters is why --
12:32:37 19 I think the question was almost those letters are why you got
12:32:40 20 out and you're appreciative of that.

12:32:41 21 THE COURT: Let me look through the testimony and
12:32:43 22 I'll see if there's anything like that in here. He did not
12:33:02 23 ask anything like that. I am going to read you the questions
12:33:05 24 and answers. There is nothing even close.

12:33:07 25 MR. KULWIN: All right.

12:33:08 1 THE COURT: This is why realtime was the world's
12:33:10 2 greatest invention. Okay? In 2014, the defendants.

12:33:14 3 MR. KULWIN: For the with.

12:33:15 4 THE COURT: The wheel is up there somewhere too.
12:33:18 5 Realtime is in the top five. In April 2014 when the
12:33:20 6 defendants wanted to call you to testify at a hearing in
12:33:23 7 Nate's case, you told them you weren't going to do it unless
12:33:25 8 there was something in it for you, correct?

12:33:28 9 "ANSWER: Pretty much.

12:33:29 10 "QUESTION: What would they put in -- it should be it
12:33:33 11 for you.

12:33:34 12 "ANSWER: I told you I did a deal in 2009 and 2014. I
12:33:37 13 think they said they might take a couple years off.

12:33:40 14 "QUESTION: You were freed later that year, weren't
12:33:42 15 you, sir?

12:33:43 16 "ANSWER: Yes, I got freed later that yeah.

12:33:46 17 "QUESTION: That's because they wrote letters on your
12:33:49 18 behalf? Objection, your Honor. Sustained to the form of the
12:33:52 19 question.

12:33:52 20 "QUESTION: They wrote letters on your behalf saying
12:33:55 21 that you should be free, didn't they? The Court, define the
12:34:00 22 they. Mr. O'Callaghan and Mr. Murphy after you testified in
12:34:03 23 April 2014 wrote letters asking the board to free you?
12:34:07 24 Mr. Burns, objection, your Honor. Overruled. The witness,
12:34:09 25 yeah, I gave that, but that ain't the reason I got free. It

12:34:13 1 continues from there. The exact reason why I sustained the
12:34:15 2 objection to Mr. Loevy's question is because the question
12:34:18 3 asked him to speculate why the parole board did what it did so
12:34:22 4 I sustained the objection.

12:34:23 5 MR. KULWIN: I hear you, Judge.

12:34:24 6 THE COURT: He hasn't testified to anything.

12:34:26 7 MR. KULWIN: All right. Judge, look, I'm making my
12:34:30 8 record. My record is --

12:34:31 9 THE COURT: You're -- honestly, you're making a false
12:34:34 10 record. I'll quote back to you what you said. I'll quote
12:34:37 11 back to you what you said.

12:34:38 12 MR. KULWIN: I am not trying to make a false
12:34:41 13 record, judge.

12:34:41 14 THE COURT: The question -- this is Mr. Kulwin, the
12:34:44 15 question, right, but here's the thing, Judge, Mr. Loevy has
12:34:47 16 now told the jury that the reason the parole board let him
12:34:50 17 out. The Court, he did not tell the jury that. What was the
12:34:53 18 request? Mr. Kulwin, the request was those letters is why I
12:34:57 19 think the question was almost those letters or why you got out
12:35:00 20 and you're appreciative of that. That's the record that you
12:35:02 21 were trying to make is incorrect. So what's your next point?

12:35:05 22 MR. KULWIN: I haven't finished that point.

12:35:07 23 THE COURT: Finish that point.

12:35:08 24 MR. KULWIN: My point is that given the question that
12:35:10 25 you sustained followed up by the other two questions you read,

12:35:15 1 that in my view, it would be nearly impossible for the jury
12:35:19 2 not to conclude that the reason he got out early was because
12:35:23 3 of the letters of O'Callaghan and Murphy. That's my
12:35:26 4 objection, that's my point and I believe --

12:35:28 5 THE COURT: What do you think you should be able to
12:35:32 6 do in response to that?

12:35:33 7 MR. KULWIN: First of all, I would like you to
12:35:36 8 instruct him that he can explain it and why did you get out?
12:35:38 9 Under my deal, under the guidelines, I was first really
12:35:42 10 eligible for parole for the first time in 2014, all these
12:35:45 11 other dates were meaningless. I was going to get out one way
12:35:49 12 or another based on that and those letters didn't do nothing
12:35:52 13 for me.

12:35:52 14 THE COURT: Okay. Every bit of that except the last
12:35:54 15 sentence, those letters didn't do nothing for me are questions
12:35:59 16 that you can appropriately ask which I said to you about ten
12:36:02 17 minutes ago now. He can testify about what his understanding
12:36:04 18 was of the deal. He can testify about what his understanding
12:36:07 19 was of his out date. He can testify about what his
12:36:10 20 understanding was of you know when he was eligible for parole.
12:36:15 21 That is all perfectly appropriate. The thing he cannot do is
12:36:18 22 why the parole board did what it did. That is the line. I
12:36:22 23 have drawn that line consistently and I am drawing it again
12:36:26 24 now. You are blurring two distinct things. Number one,
12:36:29 25 whether particular evidence is admissible and number two, what

12:36:32 1 reasonable inferences can be drawn from evidence. Okay? A
12:36:36 2 person can't testify about hearsay unless there is an
12:36:40 3 exception which there isn't for this. Okay? So he can't say
12:36:44 4 that's why the parole board let me out. That's not why the
12:36:47 5 parole board let me out. However, it's a distinct and
12:36:50 6 separate question whether a lawyer can argue later that based
12:36:52 7 on these events, it's pretty clear from the circumstances why
12:36:56 8 the person got out. That's why I'm letting Mr. Loevy ask the
12:37:00 9 questions about the letter being written, that's why I'm
12:37:02 10 letting you ask the questions about what his understanding was
12:37:05 11 of his out date. The thing that can't be put in through him
12:37:08 12 or through Mr. Fields or through anybody I don't think other
12:37:11 13 than somebody from the parole board is why the parole board
12:37:15 14 acted as it did because that's somebody else's action.

12:37:18 15 MR. KULWIN: Okay. Fine. But then he also asked are
12:37:22 16 you appreciative. I should be able to ask him based on your
12:37:25 17 understanding did the layers matter and he can say based on my
12:37:27 18 understanding, they didn't mean anything.

12:37:29 19 THE COURT: I will now tell you for I think the sixth
12:37:32 20 time in the last 15 minutes, no, you may not. No, you may
12:37:37 21 not.

12:37:37 22 MR. BURNS: Judge, may I raise a concern?

12:37:39 23 THE COURT: Yes, sir.

12:37:40 24 MR. BURNS: Mr. Loevy and now I think this is
12:37:42 25 probably the second time has suggested to the jury that

12:37:44 1 Mr. Murphy wrote a letter on behalf of Mr. Hawkins at the time
12:37:50 2 of his parole hearing. That is not true. Mr. Murphy never
12:37:55 3 authored a letter and I am concerned about the suggestion now
12:37:59 4 that has been put before that's in part when I stood up,
12:38:03 5 Judge, and went to object.

12:38:04 6 THE COURT: Say objection assumes facts not in
12:38:07 7 evidence. You just said objection, your Honor. I mean, I'm
12:38:10 8 supposed to guess on that one. So it was Mr. O'Callaghan and
12:38:13 9 Mr. Brannigan.

12:38:14 10 MR. LOEVY: May I speak to that?

12:38:15 11 THE COURT: Am I right?

12:38:17 12 MR. BURNS: Yes, sir.

12:38:17 13 THE COURT: I have seen the letters.

12:38:19 14 MR. LOEVY: If that's true and I have no reason to
12:38:21 15 doubt it, but I really screwed up, I shouldn't have say Murphy
12:38:25 16 wrote a letter if he didn't write a letter.

12:38:27 17 THE COURT: I will correct it after the break.

12:38:28 18 MR. LOEVY: Thank you.

12:38:28 19 THE COURT: I will correct it after the break that
12:38:30 20 there was -- I mean, he said yes, so he was wrong too. The
12:38:36 21 witness said yes. I will say that there was a question
12:38:38 22 shortly before the break, the question was whether Mr.
12:38:41 23 O'Callaghan and Mr. Murphy wrote letters asking the parole
12:38:44 24 board to release -- grant Mr. Hawkins parole, and the answer
12:38:49 25 was yes, that was incorrect as to Mr. Murphy. Mr. Murphy did

12:38:55 1 not write a letter.

12:38:56 2 MR. MICHALIK: Thank you, your Honor.

12:38:57 3 MR. LOEVY: Thank you.

12:38:58 4 (The trial was adjourned at 12:35 p.m. until 1:35 p.m. of
12:39:03 5 this same day and date.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25